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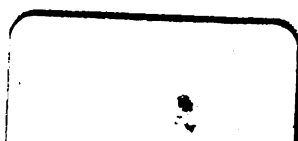
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*Report of Proceedings of the ... Annual
Session of the Georgia Bar Association*

Georgia Bar Association,
John Wesley Akin, Orville Augustus Park



REPORT

OF THE

SEVENTEENTH ANNUAL SESSION

OF THE

Georgia Bar Association

HELD AT

WARM SPRINGS, GA.

ON

July 4th, 5th and 6th, 1900

EDITED BY

ORVILLE A. PARK

SECRETARY

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GENERAL MINUTES.

FIRST DAY'S PROCEEDINGS.

WARM SPRINGS, GA., July 4, 1900.

The Seventeenth Annual Session of the Georgia Bar Association convened in the Auditorium at Warm Springs at 10 o'clock A.M., and was called to order by the President, Joseph R. Lamar of Augusta, the following members being present :

Washington Dessau, Macon; Hamilton McWhorter, Lexington; J. M. Terrell, Greenville; A. J. Cobb, Supreme Court; Burton Smith, Atlanta; L. E. Bleckley, Clarksville; A. O. Bacon, Macon; William A. Little, Supreme Court; Orville A. Park, Macon; J. L. Willis, Columbus; W. M. Hammond, Thomasville; Matt. J. Pearsall, Moultrie; W. E. Kay, Brunswick; Alex. S. Erwin, Athens; Chas. R. Gwyn, Zebulon; Clem P. Steed, Macon; Marvin L. Case, Atlanta; A. R. Lawton, Savannah; C. E. Battle, Columbus; John D. Little, Columbus; Frank U. Garrard, Columbus; B. S. Miller, Columbus; R. C. Jordan, Macon; M. P. Callaway, Macon; T. B. West, Macon; Z. D. Harrison, Atlanta; T. J. Simmons, Supreme Court; H. T. Lewis, Supreme Court; John C. Hart, Union Point; J. A. Cotten, Thomas-
ton; J. R. Lamar, Augusta; Howard Van Epps, Atlanta; A. F. Daley, Wrightsville; M. W. Beck, Griffin; T. W. Mattox, Moultrie; J. R. Terrell, Greenville; J. E. Hall, Macon; N. M. Reynolds, Moultrie; Porter King, Atlanta; J. M. McNeil, Columbus; Samuel Lumpkin, Supreme Court; H. H. Revill, Greenville; B. F. McLaughlin, Greenville; Roland Ellis, Macon; T. W. Hardwick, Sandersville; Alex. W. Smith, Atlanta; Benj. H. Hill, Atlanta; Clifford L. Anderson, Atlanta; T. A. Hammond, Jr., Atlanta; Sylvanus Morris, Athens; H. W. Hill, Greenville; J. B. Burnside, Hamilton; P. W. Meldrim, Savannah; R. L. Berner, Forsyth; F. E. Callaway, Atlanta;

T. M. Cunningham, Jr., Savannah; Paul E. Seabrook, Savannah; John W. Park, Greenville; Thos. G. Lawson, Eatonton; Lloyd Cleveland, Griffin; William F. Blue, Macon; Walter C. Beeks, Griffin; A. P. Persons, Talbotton; E. L. Brinson, Augusta; E. T. Moon, LaGrange; Walter B. Hill, Athens; Z. A. Littlejohn, Cordale; F. A. Hooper, Americus; R. T. Dorsey, Atlanta; P. H. Brewster, Atlanta; C. P. Harris, Elberton; John M. Graham, Atlanta; E. A. Hawkins, Americus; Henry R. Goetchius, Columbus; W. S. Howell, Greenville; Thos. J. Chappell, Columbus; L. C. Levy, Columbus; A. H. Thompson, LaGrange; J. L. Sweat, Waycross; George Hillyer, Atlanta; F. M. Longley, LaGrange; Geo. M. Napier, Monroe; R. B. Russell, Winder; O. H. B. Bloodworth, Forsyth; A. W. Evans, Sandersville; T. A. Atkinson, LaGrange; W. M. Henry, Rome; Olin J. Wimberly, Macon; F. D. Peabody, Columbus.

The President: The first business in order is the report of the Executive Committee by its Chairman, Mr. Burton Smith.

Mr. Burton Smith: Mr. President, in the nature of things it is impossible for the Executive Committee to prepare a formal written report. Our work not only continues to the present time, but continues hereafter until our successors are elected during this present meeting. Among other duties, we are called upon to prepare a program for each meeting and discharge such other work as may be assigned to us by the President, or may come to us while the Association is not in session. Your committee has had a number of meetings, all the members attending, some of them travelling nearly four hundred miles. We have discussed finances, we have discussed programs, and we have discussed other matters pertaining to this Association. As to finances, at every other meeting up to the present one, the Association has been not only without money in the treasury, but actually indebted to its Treasurer who had advanced money from his own pocket to us. At the last meeting the Executive Committee suggested a different plan for collecting the dues of the Association, and it has been carried out so

satisfactorily that at this meeting we not only owe nothing, but have nearly five hundred dollars in the treasury. Whether this is due to the fact that Colonel Harrison is a zealous collector, or whether he became weary of lending money to the Association, I do not know, but certainly the dues have been collected.

We have done one other thing which we believe should be reported to this Association, because the rules require us to report our action. Some years ago the chairman of the then Executive Committee, Chancellor Hill, made a collection of the reports of the Bar Associations of this country, state and national. This collection two years ago he presented to the Association, and our efficient and helpful Secretary, Mr. Park, has completed it and brought it down to date. That collection is one of the very few of the sort in the world. It is a practically complete collection of the reports of the several state and national bar associations of this country. Mr. Park prepared an index to that set of books, which, so far as we know, is the only one of the sort extant. This index has received commendation from bar associations and others all over the country. In the aggregate works thus collected there is a great amount of legal literature made easily available by Mr. Park's Index. In his introduction Mr. Park says: "The great value of the legal literature being produced by the various Bar Associations of America has often been alluded to by competent critics; yet it is undoubtedly true that few, if any, even of the most enthusiastic Bar Association advocates, are prepared to appreciate the extent, variety, literary and legal merit of this splendid literature—this result of the associated effort of the legal fraternity. It has been, unfortunately for the profession, hidden away in the depths of inaccessibility." Having acquired this fine collection, and having a most admirable index for it, we desired to put it where it would be accessible to the bar of the State, and also, in a small way, to show our appreciation of the great consideration which

the Supreme Court of this State has invariably extended to our Association; we therefore presented this collection, in a suitable case, to the Supreme Court, and it has been placed in the State library for their use, and they extend that use also to the bar.

I believe I may safely say that the bar of the State considers our Association, so far as the interest of the bar at large is aroused in the affairs of the Association, in as good condition, if not better, than ever before.

We have elected during the recess of the Association, and in accordance with the rules, the following members :

T. M. Cunningham, Jr., Savannah; W. F. Blue, Macon; Irvin Alexander, Augusta; P. L. Wade, Dublin; E. B. Baxter, Augusta; J. B. Burnside, Hamilton; F. E. Callaway, Atlanta; Sylvanus Morris, Athens; J. E. Hall, Macon; Joe Abbott, Acworth; Chas. R. Gwyn, Zebulon; Victor Smith, Atlanta; Matt. J. Pearsall, Moultrie; W. H. Hammond, Thomasville; T. W. Mattox, Moultrie; A. W. Evans, Sandersville; N. M. Reynolds, Moultrie; A. H. Thompson, LaGrange; A. L. Miller, Macon; C. P. Harris, Elberton.

We have prepared a program for this morning's session, which I will now read. The morning session is expected to last until one o'clock. The committee will later on announce the program for the other sessions of this meeting of the Association.

Mr. Smith then read the program for the morning's session.

The President : Do I hear a motion to adopt the report of the committee ?

Mr. T. A. Hammond : I move that the report of the committee be adopted.

Motion seconded and report adopted.

The President, Mr. Joseph R. Lamar, then delivered his annual address. (See Appendix A.)

Mr. Terrell : Mr. President, the General Assembly at its last session passed a resolution in which the bar of this State as a whole have very much interest—a resolu-

tion relative to a reprint of the Georgia Reports. The Librarian has kindly sent us a few sample pages of these reprints, which have been distributed among the members of the bar present. The Librarian and the Supreme Court, after considering the matter, decided that it would be wise to have this new edition annotated so as to contain the citations of our Supreme Court and the Supreme Court of the United States of our Georgia cases, from the first Kelly to the 108th Georgia. The work of preparing these annotations has been turned over to Judge Van Epps, which is a sufficient guarantee, Mr. President, that the work will be well done. I see Judge Van Epps present, and the Executive Committee have thought that it would be well for the Association to give him a few minutes to tell us about this work. At the request of the Executive Committee I now ask Judge Van Epps to favor us with a talk on this particular subject

Judge Van Epps: As stated by the Attorney-General, the Legislature at its last session passed a resolution authorizing a reprint of the Georgia Reports. The exigency out of which that resolution grew is well known to the lawyers of Georgia. Very many volumes of the Georgia reports are out of print and not accessible, particularly to our younger lawyers who are coming to the bar. No provision is made in that resolution as it passed the Legislature for the annotation of the cases contained in the volumes. The Librarian, at the request of the Supreme Court, as I understand it, concluded that he would put in the reprint annotations, and he employed me for the purpose of making those annotations, to appear in the form of foot-notes to the cases. The annotations are not indexed points. They are exact quotations from the language of the judges in many instances, and, where not protected by quotation marks, are in my own language, but with the matter so fully set forth as to make the proposition discussed entirely clear. You will note at the foot of the cases in the sample submitted by the Librarian in the

sample pages that there are black letter words showing through the sentences. Now the black letter is telegraphing to the profession the provisions contained in the Report, and a glance over a restricted number of words shows the full sense embodied in the notes in which those words are found. So when the lawyer in investigating a case comes to the citations at the foot of the page, he can tell at a glance at the caption words and at the black letter words in the body of the text whether the matter in the note is suitable to his point or not.

The scope of the work covers one hundred and eight volumes of Georgia Reports, and it also covers one hundred and seventy-six Federal Supreme Court Reports. The purpose of the annotations is to place at the foot of each Georgia case every single citation ever made in subsequent volumes within the one hundred and eight volumes of our own Supreme Court Reports, and also to put there every citation made by the Federal Supreme Court where a Georgia case has been considered, even collaterally. It will be seen, Mr. President, that this information is almost outside of the reach of our profession, particularly with reference to citations made of Georgia cases by the Federal Supreme Court. Our Supreme Court has no decisions which are subject to citation by the Federal Supreme Court prior to the year 1846. The United Supreme Court Report in which the decisions were then reported was the 45th United States. Of course behind the 45th United States there was no citation of a Georgia case, as our own court was not in existence. Between the 45th and the 100th United States there is no table of cited cases. In order to gather the information as to whether or not the Supreme Court of the United States has cited our Georgia Supreme Court in those volumes, it is necessary to make what I might call a finger-nail inspection, *i. e.*, to turn the pages of the Federal Supreme Court Reports page by page and ascertain by an actual inspection of the whole page whether a Georgia case has been cited. Between the

100th and 176th United States there is a table of cited cases, so whether or not there are any Georgia cases cited after that or not, will be very much easier. But in the original cases which have been published in the United States Reports there is no indication as to what State or what court the case comes from, and it would be necessary, therefore, to make a finger-nail search of the whole page of the Federal Supreme Court Reports to ascertain what cases were carried up by writ of error to the Supreme Court of the United States from the Supreme Court of Georgia. In the pages published I think I have accomplished, so far as human infirmity will allow, the annotation of every single citation of a case found on that page from either the Georgia or the Federal Supreme Court Reports.

As stated, no provision is made in the resolution of the Legislature for printing these foot-notes. It will rest with the next Georgia Legislature to authorize a continuance of that work, or not, as they may see proper. The scheme devised is one by which the State of Georgia is put to not a single dollar of expense. The resolution of the Legislature contemplates that the proceeds of the sale of the Georgia Reports shall be invested in the reprint of these Reports, and that when one reprinted Report is put on the market and sold, another is to be printed from the proceeds of that. I am informed by the Librarian, in a brief letter which he submits this morning, that he will be able to print these Reports, with the annotations, at from \$2.00 to \$2.25 per volume. In other words, the young lawyers of Georgia can provide for themselves through easy stages an accumulation of the State of Georgia Reports, with indexed annotations to the cases, and in many cases lawyers, well advanced in the practice, who have sets of Georgia Reports will exchange them for the new. I think the State will find a ready market for the Reports.

The President: I know that the Association is gratified that this matter has fallen into such good hands. Judge

Van Epps and Mr. Akin have already given us the best Digest in the world, and we are sure this work will be of great value to the bar.

The next business in order is the report of the Treasurer.

Treasurer Harrison: Mr. President, the Georgia lawyer is very much like the average citizen; he would rather volunteer than be drafted. Notify him that a check must be received, or a draft will be made, and you most likely will receive the check. A draft seems to have within itself an extraordinary force, and the draft which this Association at its last meeting authorized me to draw seems to have some of that force. One hundred and seventy-seven of our brethren have yielded to it, while thirty-nine have stood unmoved by the fear or the sight of it. The Treasurer's report and the vouchers have been submitted to the Executive Committee. It appears from that report that his receipts during the preceding year have been \$1,480.36, while his disbursements have been \$1,053.18, leaving a balance of \$427.18 (For detailed report of Treasurer see Appendix B.)

The President: The Association hears the report of the Treasurer; what disposition shall be made of it?

Mr. Meldrim: I move that it be received and filed. It has already been audited, I believe.

The motion received a second and was adopted.

The President: I will ask the pleasure of the Association with reference to the special reports which may be made. Are they to be referred to special committees, or acted on when read?

Mr. Terrell: At a meeting of the Executive Committee I believe that it was determined that these reports should be submitted to the Association this morning, and that they should go over for discussion until to-morrow's session.

The President: The first report is that of the Committee

on Jurisprudence and Law Reform, A. R. Lawton, chairman.

The report of the committee was submitted by Mr. Lawton, its chairman. (See Appendix C.)

The President: Under the rule that report will lie on the table till to-morrow.

Mr. Lawton: I will state, if you will pardon me, that this report is not signed and was written by the chairman. The outline of it was submitted to all the members of the committee, and has been agreed to by all of them, except Judge Fort, who has not expressed an opinion on it.

The Secretary: Judge Hillyer has sent me the report of his committee, and as it is on the same subject I will present that report to the Association at this time.

The President: Unless there is objection, Mr. Park will read the report.

The Secretary read the report of the Committee on Expert Witnesses. (See Appendix D.)

The President: If there is no objection, that report will lie on the table till to-morrow. The next business in order is the report of the Committee on Judicial Administration and Remedial Procedure.

Mr. W. M. Hammond: It is a matter of some regret to me that I have been unable to have a meeting of this committee. My associates will probably disagree with a good many things in the report, if it may be called a report.

Mr. Hammond then presented the report. (See Appendix E.)

The President: The report of the Committee on Legal Education and Admission to the Bar, W. P. Hill, chairman, will now be read.

The Secretary: That report is in my hands. It consists of six lines. I will read it as the chairman is not present, I believe.

The Secretary read the report of the Committee. (See Appendix F.)

The President : The report of the Committee on Interstate Law, Judge Lawson, chairman, is now in order. Is Judge Lawson present ?

There is no response.

The President : The report of the Committee on Federal Legislation, Mr. J. L. Tye, chairman, is now in order. There being no response the President called for the report of the Committee on Legal Ethics, Mr. A. F. Daley, chairman.

Mr. Daley : I have been unable to get a meeting of the Committee on Legal Ethics, and to keep the matter from going by default I have prepared a hasty report, but I am entirely responsible for it myself.

Mr. Daley presented the report for the Committee on Legal Ethics (See Appendix G.)

The President : The report of the Committee on Grievances is now in order.

Mr. Kay : No matter has been brought to the attention of that committee during the past year, consequently we have no report to make.

The President : According to the program fixed by the Executive Committee, we will now hear the report of the Committee on Law Reform, Mr. C. E. Battle, chairman.

Mr. Battle : I think possibly that committee being called upon for a report at this time is a mistake. That committee made a report at the last session of this body, and it was my understanding that it was discharged from any further duty. Certainly, we had no knowledge of the fact that it was continued for any further performance of duty. About a month ago I received a communication from the secretary calling my attention to the fact that that committee was expected to make a report at this meeting. I communicated with some of the members, and they agreed with me that the committee had made its report at the last meeting and had been discharged. For that reason we have no report to make.

The President: We will now hear the report of the delegates to the American Bar Association.

Mr. Meldrim presented the report. (See Appendix H.)

The President: The morning exercises will be concluded by a paper by Col. Lawton.

Col. Lawton read a paper on "Some Characteristics of Military Law." (See Appendix I.)

Chairman Smith then made the announcements.

The program having been finished the Association stood adjourned until Thursday, 10 a. m.

FIRST DAY'S PROCEEDINGS—EVENING SESSION.

At eight o'clock in the evening the Hon. R. L. Berner was introduced by the President and delivered an address to the members of the Association. (See Appendix J.)

The President: If the Executive Committee is prepared to report the program for to-morrow, the Association will now hear them.

The Secretary read the program and made the announcements.

A motion to adjourn was made and carried.

SECOND DAY'S PROCEEDINGS.

The Association was called to order by the President at 10 o'clock.

The President: The first business in order is to hear the report of the Executive Committee for this morning.

Mr. Smith, Chairman of the Executive Committee, read the program for the day.

Mr. Smith: With the permission of the members I will read the program for to-night and to-morrow. To-night at 8:30, in this hall, Judge Howe, of New Orleans, will deliver an address. At 10:30 there will be an informal

collation, we might call it. It will be something in the nature of a banquet without the formality of a banquet. The costumes we wear now are expected and in order. To-morrow morning we will have our last session. At the morning's session it is believed that Judge Bleckley will make a few remarks. He has declined, but under the pressure of his friends, we do not believe that this will be final. We will have a discussion of the various reports which have been and will be read. I may remark that there will be a good deal of discussion on some of the reports, and we have every reason to believe that it will be very interesting. Among other things there will be a discussion of the "dumb act" to-morrow morning.

Mr. Dessau: If I may be permitted at this juncture to interrupt the order of business which has been prescribed by the Executive Committee, I desire to move, in accordance with the custom that has prevailed heretofore, that a committee of five be appointed by the chair to report the names of officers of this Association for the ensuing year, and that this committee be instructed to report at the opening of the session to-morrow morning.

The motion was seconded and carried.

The President: Judge Lawson, chairman, will now read the report of the Committee on Interstate Law.

Judge Lawson: Mr. President, the committee presents a very brief report on this subject. It was not thought necessary to embrace in the report facts which are well known to every one, so the committee has contented itself with making a brief statement on the present condition of things.

Judge Lawson presented the report of the committee. (See Appendix K.)

The President: In accordance with the rule announced yesterday, that report will lie on the table to be considered to-morrow. We have with us to-day the Associate Dean of the Law School of Wisconsin, who has come a long ways from home to address us, and we greatly appre-

ciate his willingness to undergo the fatigue of so long a journey. We warmly and cordially welcome him to our midst. It gives me great pleasure to present to the Georgia Bar Association Charles Noble Gregory, of the Bar and University of Wisconsin.

Mr. Gregory: I am unable to agree with the President that I am a long way from home. The kind attentions and courtesies shown me convince me that I am at home. I cannot but feel that there is little or no distance intervening between me and my own home.

Mr. Gregory delivered his address, "American Lawyers and Their Making." (See Appendix L.)

A recess of ten minutes was had.

After the recess the chair announced the Nominating Committee as follows: Washington Dessau, Macon, Chairman; Marcus Beck, Griffin; Hamilton McWhorter, Lexington; A. F. Daley, Wrightsville; T. A. Hammond, Atlanta.

The President: Our next order is a paper on "Juries and Jury Trials," by Judge Beck.

Judge Beck read his paper. (See Appendix M.)

The President: No member of this Association has done more for its success than Walter B. Hill. As Secretary, as member of the Executive Committee, and as President, he not only contributed very largely to the early success of the Association, but he endeared himself to members of the bar throughout the State.

Amid the general gratification at his election as Chancellor of the University, there was no body of men more enthusiastic than the members of the bar who loved him, who so well knew his strength, his character and his ability. The first year of his Chancellorship has come to a close, and the wisdom of his selection has been demonstrated by the renewed interest in the University, enlarged attendance, and the creation of an enthusiasm for the old college. But the question arises as to how a man could go from the active practice at the bar and, without

previous experience in educational work, achieve such sudden success as the head of an institution of learning. I have seen it stated somewhere that just after the war General Toombs crossed the Atlantic on a sailing vessel. At the end of the voyage some one asked the captain of the ship how he liked his distinguished passenger. The captain replied that he did not like him at all, that he had no use for a man who in ten days knew more about the ship than the captain and all of the crew. This was repeated to the general, who said that there was nothing surprising in that, since he was a practicing attorney and all his life had been fitting himself to learn anything that turned up. The application is so obvious that I need not explain it in introducing our brother at the bar, the new Chancellor of the State University.

Chancellor Hill delivered an address on "The Biological Law of Infancy." (See Appendix N.)

Mr. Terrell : I am sure that I voice the sentiment of all the members of this Association when I say that we are delighted that our Brother Hill is with us at this meeting. I am also sure that all the members will agree with me in expressing the wish that he may attend our future meetings. I move Mr. President that our Brother Hill be elected an honorary life-member of this Association.

The President : I put that motion with great pleasure.

The motion was seconded and unanimously adopted.

The President : The report of the Committee on Memorials is now in order, and if that committee is ready with its report the Association will now receive it.

The Secretary : The report of the Committee on Memorials has been sent to me by its chairman, Mr. Bolling Whitfield of Brunswick. It is very short, there having been only four deaths in the last year.

The Secretary read the report of the committee. (See Appendix O.)

On motion the Association adjourned to meet at 8:30 P.M.

SECOND DAY'S PROCEEDINGS—EVENING SESSION.

The Association was called to order at 8:30.

The President: We have the pleasure this evening, ladies and gentlemen, of hearing a distinguished former member of the New York bar, a leader of the present Louisiana bar, and an ex-President of the American Bar Association. It is none too often that a man attains great success under even one system of laws,—it is rare indeed that a member of the bar has the opportunity of practicing under the civil and the common law, and attaining distinction in each. But such has been the fortune of our friend and visitor, Judge Howe of New Orleans, who will now address us.

Judge William Wirt Howe then delivered an Address on "The Law of Primitive Peoples." (See Appendix P.)

THE BANQUET.

At the conclusion of Judge Howe's address the Association adjourned to the dining-room of the hotel where the "informal collation" was spread. The President acted as toast-master and called upon the following gentlemen in turn: Judge Howard Van Epps feelingly responded on the subject of "Love"; Col. A. R. Lawton sang a plantation melody, "I'se Gwine Back to Dixie"; Mr. Alex. Smith spoke on "The Association"; Mr. J. K. Orr, from the laity, gave us some views of the lawyer from his standpoint; Major P. W. Meldrim discussed the question, "Has the Lawyer Kept Pace with the Times?" Colonel W. A. Henderson of the Tennessee bar was introduced and extended a fraternal greeting from the bar of our sister State; Mr. G. M. Napier fittingly closed the evening by toasting "The Ladies."

THIRD DAY'S PROCEEDINGS.

The Association was called to order at 10 o'clock Friday morning by the President.

Chairman Smith: I am permitted by the Executive Committee, before announcing their report for the order of business this morning, to call attention to the fact that the American Bar Association has made provision for celebrating the one hundredth anniversary of the organization of the Supreme Court, by Chief Justice Marshall, next year. They have appointed a committee to confer with the Bar of each State, and it is desired that the State Bar Associations act with them. Whether it would be proper to raise a special committee, or whether it should be referred to the Executive Committee to be appointed for next year, I do not know. I move, however, that this matter of a suitable celebration of the organization by Chief Justice Marshall of the Supreme Court be referred to the Executive Committee for such action as may be necessary in conjunction with the American Bar Association.

The motion was seconded and adopted.

The Chairman of the Executive Committee announced the program for the day.

The President: The Association will hear the report of the Nominating Committee.

Mr. Dessau: The Nominating Committee begs to make the following report:

The committee appointed to report officers for this Association for the ensuing year beg leave to submit as follows:

H. W. Hill, Greenville, President.

Charlton Battle, Columbus, 1st Vice-President.

John C. Hart, Union Point, 2d Vice-President.

B. H. Hill, Atlanta, 3d Vice-President.

A. F. Daley, Wrightsville, 4th Vice-President.

J. B. Burnside, Hamilton, 5th Vice-President.

O. A. Park, Macon, Secretary.

Z. D. Harrison, Atlanta, Treasurer.

EXECUTIVE COMMITTEE.

Burton Smith, Atlanta, Chairman.

J. M. Terrell, Greenville.

Bolling Whitfield, Brunswick.

Lloyd Cleveland, Griffin.

A. R. Lawton, Savannah.

(Signed)

W. DESSAU, Chairman.

H. McWHORTER,

M. W. BECK.

A. F. DALEY,

T. A. HAMMOND.

The President : You have heard the report of the committee. According to the Constitution all elections have to be by ballot.

If there are no other nominations, and the chair hears none, a motion for the Secretary to cast the ballot of the Association will be in order.

On motion the Secretary was instructed to cast the ballot of the Association for the gentlemen nominated by the committee.

The Secretary : I take pleasure in casting the ballot of the Association for the officers named.

Judge Van Epps: I ask as a matter of personal privilege to send forward to the Secretary's desk and have read a brief resolution, and I ask that it may be put upon its passage.

The Secretary read the resolutions, as follows :

Resolved, 1st. That one and a half lines of the printed record be appropriated and set aside to the expression of the following sentiment :

"Sacred to the memory of the members of the Association who departed this morning."

Resolved, 2d, That a recess of thirty seconds be now taken for the indulgence of the strong mixture of pleasure and displeasure among the bereaved co-members of the departed who are left to bear the heat and burden of the day.

Mr. T. A. Hammond: I take pain in seconding and expressing my approval of the resolutions just read, and I hope my time will be taken out of the time allowed for the expression of the sympathy of the Association.

The resolution was adopted.

Mr. Peabody : I wish to offer an amendment to section four of the by-laws defining the duties of the Executive Committee, as follows :

“At all meetings of the Association they shall do everything in their power to promote social intercourse among the members, to the end that every member attending shall become personally acquainted with every other member.”

The President : Under the rules that lies on the table until the next meeting.

Mr. Terrell : That is for an amendment to the constitution. This is an amendment to the by-laws.

Mr. Lawton : I have been on the Executive Committee and I cannot but feel that its duties are sufficiently onerous without adding to them duties of a social nature. My observation is that that committee is a very busy body. That committee has done a great deal in bringing the members together, making one acquainted with the other, but it would not increase the strenuous efforts of the Executive Committee to make the meetings of the Association a success by adopting this resolution. I think it would be unwise to adopt that suggestion, and I hope the by-laws will not be so amended.

Mr. Terrell : I move that the by-laws be amended by having an additional standing committee known as the Social Committee, that committee to be appointed as the other committees are appointed.

Mr. Peabody : I accept the substitute.

Mr. Meldrim : I think Reception Committee is rather better.

Mr. Terrell : That is a good suggestion, and I will adopt it.

The substitute as amended was adopted.

Judge Hillyer : I desire to offer a resolution. The addresses we have heard were all good, and in singling out this one of Chancellor Hill I do not wish to make any dis-

inction, but there is something particular that makes me take this one from that string of addresses to which we listened so attentively on yesterday. I am a graduate of Mercer, and possibly some of the men before me may come from one of the schools known as denominational colleges; but without reference to association or allignment with these different colleges, we are all citizens of Georgia, and in common with every other inhabitant of the State we owe allegiance to the State University. Agitation is the means by which all reforms and forward movements are brought to success, and I think there was something in that address which might properly be brought to the attention of the members of the General Assembly. They might see it casually if published in the papers, or they might see it if contained in the usual reports, but I think to have it printed separately and mailed separately to each member of the legislature in advance of the assembling of that body, as soon as they may be chosen and their names ascertained, would the better fix their attention upon this important subject. The truth is, as a Georgian, I feel some mortification in the want of progress in this matter of colleges; not only of the State University, but the other colleges as well. When this eclipse occurred which attracted scientific men from everywhere—we had people from the Pacific, even from Belgium—scientific men with instruments of a great and costly character to make observations, not one of our Georgia schools or colleges was there with apparatus to make a respectable or even decent appearance in the presence of these scientific men. Mr. President, we ought to be ashamed that after spending millions on education we have left off the capstone. I move the passage of these resolutions:

Resolved, That the admirable address of Honorable Walter B. Hill, Chancellor of the State University, delivered on yesterday, and to be embodied in the usual report of the proceedings, be also separately printed, and a copy furnished by the secretary to the members of the next General Assembly, so soon as chosen and ascertained, and in ad-

vance of the meeting of that body, with the expression of the strong indorsement and approval of this Association.

Senator Bacon: I would suggest that the resolution ought to be printed with the address because that embodies what the resolution provides.

Judge Hillyer: I accept the amendment.

Mr. Bacon: I did not intend it as an amendment necessarily. But that is the only way in which this action can be embodied.

The resolution was adopted unanimously.

The President: The next business before the Association is the Symposium on the "Dumb Act of 1850." The first paper is by Mr. Peabody.

Mr. Peabody: Not being certain that I could be present I took the liberty of reducing my remarks to writing, and for the convenience of the Association I sent up on yesterday about twenty copies and asked Mr. Levy to distribute them. I believe this has been done, so that if any of the gentlemen wish to follow the discussion, they can do so.

Mr. F. D. Peabody read the following paper:

"THE DUMB ACT OF 1850."

Inasmuch as there are but few lawyers at the bar to-day in Georgia who practiced under the old régime, perhaps it would be of some value to the discussion that is to follow, should I attempt a brief statement of the law as it stood before the passage of the Act of 1850, and as it stands modified by that act.

In doing this, I shall incidentally give the opinions of a number of judges and writers on the subject.

Prior to the passage of this act the English practice prevailed in Georgia. Nisbet, J., in an early opinion,¹ in illustrating and stating the English practice, quoted from Lord Brougham as follows: "Lord Ellenborough was not one of those judges who in directing the jury merely read over their notes, and let them guess out the opinion they have formed, leaving them

1. *Holder v. State*, 5 Ga. 441

without any help or recommendation in forming their judgments. Upon each case that came before him he had an opinion, and while he left the decision to the jury, he intimated how he thought himself. This manner of performing the office of a judge is now generally followed and most commonly approved."

It is a mistake to suppose that under the English rule as practiced in Georgia, that juries were mere puppets to register the will of the judge.

After an elaborate discussion of the rule, Judge Nisbet, in the case above quoted, concludes as follows: "Whilst we thus concede to the judge the right of opinion on the facts, we have held that he shall not direct the jury how they shall find, but shall leave that distinctly to them. The distinction between opinion and direction runs through all the books; whilst the judge may give to the jury his help or recommendation in making up their verdict, yet they are to be left free to judge for themselves. The judgment on the facts should not be left by inference to the jury; it ought to be distinctly abandoned to them. Their unquestioned right ought to be intelligibly presented to them, and they ought to be invited to its exercise, in all cases, where the court intimates an opinion. They should be made to feel that upon them alone devolves the responsibility of their verdict. They ought not to be permitted to feel that they can take shelter under the opinion of the court."

Referring to this and other Georgia cases, that learned jurist and writer, Judge Seymour D. Thompson, says: "These and other decisions before the passage of the statute, exhibited a strong tendency in the Supreme Court of Georgia to uphold with firmness the independence of the juries. Thus, in a celebrated capital case it was held error for the judge, in his charge to the jury, to intimate doubts as to the competency of certain legal testimony, which had been offered before them, since this was calculated to weaken its effect in their minds. So, it was error to remind them of the existence of the Supreme Court, to which the defendant could carry his case, if evidence offered in his behalf had been improperly rejected, and an appeal in consequence should become necessary. Such a remark, however well intentioned, was calculated to lessen, in the minds of the jury, the sense of their responsibility, and, at the same time,

convey the idea that the proof already before them was not sufficient to acquit the defendant."^{1 2 3}

In the Federal courts, a rule obtains similar to that in the English courts. The rule is thus stated by Mr. Justice Gray: "Trial by jury in the courts of the United States is a trial presided over by a judge, with authority not only to rule upon objections to evidence and to instruct the jury upon the law, but also, when in his judgment the due administration of justice requires it, to aid the jury by explaining and commenting upon the testimony, and even giving them his opinion upon the questions of fact, provided only he submits those questions to their determination."⁴

The act under discussion was passed February 21, 1850. Its caption is as follows: "An act to prevent judges of the several superior courts in this State from making certain charges or giving their opinions to or in the hearing of the jury, and to define the same as error."

The first section provides "that it shall not be lawful for any or either of the judges of the several superior courts of this State, in any case, whether civil or criminal, or in equity, during its progress, in his charge to the jury, to express or intimate his opinion as to what has or has not been proven, or as to the guilt of the accused."

The second section provides that a violation of the provisions of the first section shall constitute reversible error.

The act as codified appears in section 4334 of the Civil Code of 1895.

It is worthy of observation, in passing, that had the body of the act literally followed the caption, the judges would have been prohibited from expressing an opinion on the law, as well as the facts. The draftsman of the caption must have had the provisions of the Constitution of 1777 before him, which made juries judges of the law, as well as of the facts, in both civil and criminal cases, but he weakened when he came to the body of the act, and left the judges the privilege of expressing their opinion on the law, but not on the facts.

1. Thompson on Charging the Jury, p. 53.

2. State v. Glaser, 1 Ga. 476-487; Bell v. Maury, 3 Ga. 456-471; Potts v. House, 6 Ga. 824.

3. Monroe v. State, 5 Ga. 86.

4. U. S. v. Philadelphia R. R. Co., 123 U. S. Rep. 113.

At the time this act was passed, the Constitution of 1798 was in force. The provision of that instrument on jury trial was as follows: "Trial by jury, as heretofore used in this State, shall remain inviolate."¹

In a case decided before the passage of the act, Warner, J., said of this provision: "The trial by jury contemplated by the Constitution is evidently a trial by a common law jury of twelve free and lawful men of the body of the county."²

In another case, Lumpkin, J., said: "The provision in our State constitution that trial by jury, as heretofore used, shall remain inviolate means that it shall not be taken away, as it stood in 1798, when that instrument was adopted,"³ etc.

There can be no question that the practice that obtained in Georgia in 1850, and prior thereto, was the same as that "heretofore used in this State" at the time of the adoption of the constitution of 1798.

Blackstone, who published his commentaries about thirty-three years prior to 1798, in his chapter on "Trial by Jury," says: "When the evidence is gone through on both sides, the judge, in the presence of the parties, the counsel, and all others, sums up the whole to the jury, omitting all superfluous circumstances, observing wherein the main question and the true issue lies, stating what evidence has been given to support it, with such remarks as he thinks necessary for their direction, and giving them his opinion in matters of law arising upon that evidence."⁴

Independent of the effect of the words "as heretofore used in this State," it would seem that one of the common law incidents of "Trial by Jury" was "the privilege and duty of the court to comment upon the evidence, to pronounce upon its competency and to sum it up, and its right to express its opinion upon the facts proven."⁵

It is a remarkable fact that, although this act has been before the Supreme Court of Georgia scores of times, and has proven the rock on which many admirable charges have split, yet, so

1. Cobb's Digest, p. 1125.

2. Jones v. State, 1 Ga. 66.

3. Steamboat Co. v. Foster, 5 Ga. 207.

4. Cooley's Blackstone, Vol. 2, p. 284.

5. Holder v. State, 5 Ga. 442.

far as I am at present advised, I know of no case in which its constitutionality has been questioned; and yet, no less a personage than Mr. Joseph Choate has expressed a grave doubt as to the constitutionality of all such statutes; and our own former Chief Justice Bleckley has strongly condemned the statute, and more than intimated a doubt as to the constitutionality.

Various suggestions have been made as to the probable reasons that led to the passage of the act of 1850. In 1848 Mr. Justice Nisbet, in one of the cases already quoted, discussed the then existing English rule pro and con. He let fall an observation that throws a flood of light on the reasons that most likely influenced the legislature two years later to pass the act.

Speaking of the expression of opinion by the judge, he said: "It seems to me that it is particularly wrong, in view of the fact that, except in a few distinguished instances, the verdict of a jury cannot be reached for a finding contrary to the facts, by any corrective tribunal. Through the jury, therefore, the judge, as a general rule, is made irresponsible for his opinion on the evidence."

This statement of the then existing practice as to new trial on the ground that the verdict was contrary to evidence is borne out by a prior decision in 1847,¹ and is thus stated:

"The rule for our guidance is clearly defined in the books, and is this: *'that the verdict will not be set aside as contrary to evidence when there has been evidence on both sides, and no rule of law violated, nor manifest injustice done, although there may appear to have been a preponderance of evidence against the verdict.'*"

And also, in a subsequent case, decided in 1849, Stroud v. Mays.²

The opinion in the case of Sparks v. Noyes,³ decided in 1879, and which is now codified as section 5585 of the Civil Code of 1895, furnishes a good illustration of legal evolution. By this section, sustained by an unbroken line of later decisions, not only can a judge "grant a new trial on the sole ground that the verdict is contrary to evidence," but when he does it, his discretion will not be controlled, unless it appear from the record that

1. Peek v. Land, 2 Kelly 16.

2. 7 Ga. 215.

3. 64 Ga. 437.

he abused his discretion. Of course, his refusal to grant a new trial is reversible by the Supreme Court where the record shows that the verdict is contrary to the evidence relied on to support it.

It would seem to be a fair historical conclusion that Judge Nisbet, in the expression quoted, voiced the controlling reason that induced the legislature to enact perhaps the most radical piece of legislation ever directed at the institution of "Trial by Jury."

As the practice then stood, undoubtedly the judge could, through the jury, commit irresponsible error. Error that could not be reached by a reviewing court, nor even be corrected by himself by the grant of a new trial, and it cannot be doubted that in many instances this led to wrong conclusions. Although, in almost the same breath Judge Nisbet added: "I am aware too, that there are cases where such a power in the court is not only desirable, but necessary. In cases of great complexity, it is right that the jury should have the aid of the court in making up their verdict. How to limit the right of opinion, so as to secure it from abuse and yet secure its advantages, is the difficulty. Now, the rule is without limitation. An opinion may be expressed by the court in all cases, and there is no restriction, but that which good sense and respect for the great fundamental doctrine of the trial by jury imposes; a restriction which I am free to admit has proven sufficient very generally in our courts, but which might not always be felt as any restriction at all. We pretend not to suggest any modification of the rule; to modify it, if indeed necessary, belongs to the legislature. We adhere to the rule."¹

From this, it would appear that up to that time (1848), the "good sense" of the judges had proven a sufficient restriction, but the learned and anxious judge seemed to have some fear as to the perpetuity of this commodity in the future, a fear not borne out by our judicial records of the past half century.

Mr. Justice Lumpkin, too, expressed himself in an early case (1848) on this rule, as follows: "We doubt whether it would be wise even in the legislature to alter the law as it now stands.

1. 5 Ga. 443.

And yet we are quite clear, as we have heretofore declared, that it is altogether better that the judges should go short of rather than transcend their powers in expressing their opinion on the testimony."¹

If I am correct in my conclusion as to the paramount reason that lead to the adoption of the new rule, then as the reason has fallen, should not the rule fall also? If the practice has so changed by the evolution of time as to no longer lead to the abuses then likely to grow up under the old rule and which made the new rule necessary in the opinion of the legislature, then why not abolish the new rule and go back once more to real trial by jury, with all of its benefits restored, and with its most objectionable feature eliminated?

What can be more illogical than the admitted right to grant a new trial on the sole ground of the verdict being contrary to evidence, and yet to deny to that same judge the right before verdict of expressing a simple opinion, without direction to the jury, that would most likely save them from making an incorrect verdict, and save the court from having to set it aside, and save the Supreme Court from having to review the decision, and save the county the expense of another trial?

Even further: Our judges now can "adjudicate as a question of law on a motion for nonsuit that there is nothing for the jury to try."²

By what process of reasoning can this power be upheld, and the less power denied, of a simple expression of opinion?

Every judgment of nonsuit is predicated on the judge's opinion of the evidence, at last. He can express a controlling opinion on the whole of it, but not a word of advisory opinion on a part of it. He can demolish the whole structure, and yet dare not remove one shutter to let in the light, whereby the jury may see its way to a right verdict.

The act of 1850 has fulfilled its purpose; perhaps, a commendable purpose. Let it stand aside. There is nothing radical in the demand for the repeal of this act. It is not something new and untried that is proposed, but rather a return to the "old paths." The fear expressed by Judge Nisbet over

1. *Bell v. Mann*. 5 Ga. 471.

2. *Smith v. G. R. R. & B'k'g Co.*, 82 Ga. 801.

fifty years ago that the restriction of the "good sense" of the judges might not always be felt as any restriction at all, has proven groundless in those jurisdictions where the old rule has always prevailed. It has worked well in England, in our own Federal courts, and in the courts of many of our States; and the conclusion would appear to be irresistible that it would have worked equally as well had it been left in the juridical system of Georgia.

As matter of actual practice, the judges in charging under the act of 1850 become so nervous in their effort to plumb the requirements of that act, and not express any opinion on the facts, that they frequently fail to express any very clear opinion upon the law. And again, in most cases, the line of demarkation between law and fact, and questions of mixed law and fact is so shadowy, that the fear of committing reversible error makes the judges shun these questions and leave the jury unaided and uninstructed thereon.

There exists a reason why the jurors of 1900 need the advice and assistance of the judges more than did the jurors of 1850. Although the general standard of intelligence has advanced, it can hardly be claimed that this is true of jurors, as a class. It is an admitted fact that the juries of Georgia, do not, as a general rule, represent the best class of citizenship. The man of affairs, whose wisdom and experience eminently fit him to pass on the issues made in litigated cases, shuns the jury box; and is generally shrewd enough to avail himself of some of the all too numerous jury exemptions. His less intelligent neighbor is sworn in, and this kind predominating, they all the more need the aid and assistance of the trained and skilled mind of the trial judge to guide them to a right conclusion. Jury duty is an incident in the life of the juror. To arrive at the truth, by legal means is the life work of the judge. The one is a raw recruit; the other is a veteran of many forensic battles between truth and error, and between right and wrong. Let the veteran be free to guide and assist the raw recruit, and he will the more often hit the mark.

The President: The next paper is by Mr. J. B Burnside. Mr. Burnside read the following paper:

THE ADVISABILITY OF THE REPEAL OF "THE
DUMB ACT OF 1850."

It has been truly said that conservatism is one of the most noteworthy characteristics of the bar. Slow to indorse any radical change of a system of judicial procedure under which it has been trained, the conservative bar, it will be concluded, would not acquiesce in a change for fifty years without complaint, unless such change met its approbation and indorsement.

Therefore we conclude that the act of 1850, which made it error for a judge of the superior court "in any case—civil, criminal or in equity—during its progress or in his charge to the jury, to express or intimate his opinion as to what has or has not been proved, or as to the guilt or innocence of the accused," did meet the approval of the bar. Of recent years, however, some few have argued that the act aforesaid, which Judge Bleckley has styled "The Dumb Act," is an unwise law, and the advisability of its repeal has been made a subject of discussion for the Association; to which discussion this paper is devoted.

Prior to the adoption of the "Dumb Act" it was customary for a trial judge, in the exercise of his legal prerogative, in the trial of a cause, to sum up the evidence in his charge to the jury, and to express his opinion thereon. But this power of the judge to give an expression on the testimony was not without its limits, and many judgments were reversed because the power was transcended by the trial judges. It seemed difficult to educe a rule whereby the respective provinces of the court and jury could be clearly distinguished, and frequently judges would express their opinions in such a way as would be held an infringement on the privileges of the jury, though not intending to exert any undue influence over them. Often the language employed in expressing an opinion on the facts would amount to a direction rather than a mere opinion, and not infrequently there was an assumption or presupposition of a fact on the part of the court, which should have been left to the determination of the jury. In 6 Ga. 525, Judge Joseph H. Lumpkin uses this language: "We must condemn the practice in courts of *assuming* that any fact has been established by the proof, with the view to predicate a legal opinion thereon." Such were some of the difficulties in-

volved in trials by jury under the old system, which, prior to the act of 1850, had become merely nominal.

In discussing the power of a trial judge to express an opinion on the evidence in 5 Ga., 471, Judge Lumpkin doubts whether it would be wise in the legislature to alter the law as it then stood. But in that connection he further says, 'and yet we are quite certain, as we have heretofore declared, that it is altogether better that judges should come short of, rather than transcend their power in expressing their opinion on the testimony,' and adds, "In case of doubt, I would make this infringement on the privileges of the jury sufficient ground for granting a new trial." The following year, however, all of Judge Lumpkin's doubts as to the wisdom of such a legislative enactment had cleared away, for in 6 Ga. 526, he says: "I trust that another legislature will not intervene without its being made a distinct ground of error for the court to intimate its opinion to the jury upon the facts and circumstances of the case. Until this is done trial by jury if not nominal will certainly not be what has been fondly proclaimed by its eulogists—'A privilege of the highest and most beneficial nature.' Better abolish it altogether if it cannot be protected from the control of the co-ordinate branch of the judiciary. Life, liberty and property derive but little security from the constitutional *form* of trial by jury, if its constitutional *force* is undermined and destroyed." It was doubtless this opinion of Judge Lumpkin which was directly responsible for the passage of "The Dumb Act," for it was enacted at the first session of the legislature after the opinion was rendered.

It seems unreasonable that this urgent appeal for the passage of such a law should have been made without cause or occasioned by a groundless fear. Surely Judge Lumpkin was convinced, from a familiarity with the subject which his position on the supreme bench afforded, that trial by jury, if it had not become nominal, was certainly not what it had been fondly claimed by its eulogists; and he believed it necessary to enact a law that would restore the *force* of trial by jury, which evidently, in his opinion, had been lost. The act was passed according to his views and recommendations.

The purpose of the act was to throw every possible safeguard around the sacred right of trial by jury, which is everywhere

recognized as one of the chief characteristics of free government; and the question whether the danger thereto was imminent or a mere possibility does not properly enter into this discussion. In either event the course of wisdom is manifest, for why wait till danger is imminent or for an actual infringement before making a law preventing the possibility of infringement?

The right of trial by jury being held sacred by all, the wisdom and excellence of which none will question, for centuries past, and at the present time recognized as the great bulwark of liberty, it would be useless and impertinent in this connection to expatiate on its wisdom or importance.

The sole question pertinent to this discussion is, did the act in question, as argued by some, "strike a blow at the very root and foundation of the institution it intended to guard?" and hence, does genuine trial by jury exist in Georgia to-day?

The chief objection urged against the law is that it deprives the jury of the benefit of the aid and experience of the intelligent judge in passing upon a doubtful question, and it is argued that the judge could be of invaluable assistance to the jury in explaining and commenting upon the weight of the evidence. Under what is called the historical jury trial the judge was allowed to express his opinion on the evidence, but did it not virtually amount to a trial by judge and trial by jury under that system become merely nominal? How natural for the jury to accept the opinion of a learned judge as being correct and base their verdict thereon. And even though as a rule the judges were and still are, honest, upright, intelligent men, wearing the ermine with that purity which the name implies, still we find that reproach was cast upon the aforesaid historical system. In 5 Ga. 488, the court, in commenting upon the necessity of handing to posterity the institution of juries as perfect in all respects, quoting the eloquent words of a New York judge which emphasized the fact that juries should be left to understand clearly that they are to decide the fact upon their own view of the evidence, referring to the remarks of the learned New York chancellor, says: "Were their spirit more thoroughly infused into our system, we should no longer hear it cast upon it as a reproach, that the use of a jury is merely to screen the court from the responsibility and odium of a decision, which is in fact, in most cases, the result of the judge's own view of the

testimony. It is needless to preserve the form of trial by jury, if that body is deprived of its just powers and privileges."

So we see there must have been some necessity for protecting the right of trial by jury from the "control of the coordinate branch of the judiciary." And instead of striking a blow at the very root and foundation of the institution, "The Dumb Act" made jury trials more particularly trials by jury. It is admitted by those who favor the repeal of the act and a return to the old system, that in most instances the opinion of the judge would control the verdict. It is also admitted that this power in the hands of a corrupt or prejudiced judge would work incalculable harm to the rights of parties, and "the jury become as it did in England under the infamous Lord Jeffries, 'a nose of wax,' to be moulded as the judge saw fit." If a corrupt or prejudiced judge would mould wrongly, an upright, honest judge would mould rightly, and the jury at last would be 'a nose of wax' moulded rightly or wrongly according to the good or bad character of the presiding judge. Then the argument of those who favor the repeal of the act amounts to this: Give us wise and upright judges, and in order to preserve the form of trial by jury, give us wax figures for jurors..

And we have to infer from their argument, that it takes this moulding process to constitute an historical, constitutional, genuine jury trial, for they tell us that the true jury trial is where the judge can counsel, advise, lead and guide the jury.

In the trial of causes the jury should have a specific function to perform which it cannot have under the moulding system.

It is hard to understand the real spirit of jury trials any other way than that it demands the carrying out of the maxim, that "the judge responds to the law and the jury to the fact."

If the evidence in a case is all corroborative and unconflicting, the judge may direct a verdict—a nonsuit may be granted when the evidence fails to sustain the plaintiff's allegations, but where there is an issue of fact the jury should be called upon to perform its function. Could any other way have the spirit and force of a trial by jury? and it is the spirit and force which is guaranteed by the constitution and not merely a form without force. Yet it has been intimated that the act is unconstitutional. Repeal the act and we have the form of trial by jury under the moulding system without the force; with the act operative and of

force the moulding is eliminated, and we have the true jury trial, which, by the provisions of the act, cannot be undermined or destroyed. If it takes the *force* as well as the *form* to constitute a trial by jury, then the act is not unconstitutional.

I do not mean to reflect in the least upon our able, upright and honest judges, but I think the scope of their power is all sufficient under the law as it now exists, especially in this day of their election by popular vote. How human it is for us to believe, in all honesty, the statements of our political friends as against those of our political enemies; and in the trial of a case where one of the opposing parties is a strong political friend to the judge and the other his bitter political enemy, how almost impossible for him to be absolutely impartial between them if allowed to give an expression of opinion on the testimony, it matters not how honest he may be. And this is all the more true if, as is claimed by one very learned and able advocate of the repeal of the "Dumb Act," some of our judges are "pitifully and painfully weak in the dorsal region," in the correctness of which statement, however, I do not concur. Too much power in a single individual is dangerous, especially in one occupying so important a position as a judge of the superior court.

Let the act remain as it is. It has worked a great and needed reform in trials by jury in Georgia. If it was an innovation, it was one on the line of progress. At the time of the passage of the act reforms were needed, and, speaking of them in this connection, Judge Lumpkin says, again, in 5 Ga. 525: "And why should we falter? Inquiry and progress are the vital elements of republican government. Our free institutions, what are they but innovations? The bulk of our legislation is but the correction, reform and abolition of the past. We owe everything as a people to the fearless spirit of Truth, and it is fortunate for the community, while the bar of this State exercises such a deserved influence on the public mind as well as in public councils, that as a class it is generally found on the side of common sense and liberal principles." Why return to the old paths? Let jurors who by the provisions of the "Dumb Act" are protected in their privileges, and who on account of their residence in the county in which they serve, are qualified to judge of the credibility of witnesses and to understand the motives of parties, continue to decide issues of fact unaided and unmoulded.

The President: Judge F. M. Longley will read the paper of Mr. Frank Harwell, who is absent.

Judge Longley: This short paper is by my friend Mr. Harwell, who could not be present, but who has observed the rule laid down by Judge Bleckley and alluded to last night, that the one inalienable right of the citizen is the right not to be bored by long speeches and long papers, so he has made it short. I will read the paper because it differs from the papers which have already been read. Now one fact has come to my attention which ought not to be overlooked in this discussion, the question of weight and authority. A representative of this county directed this inscription to be placed on his monument: "Weight 335, seven feet five inches tall." He voted for the bill, so it carried the question of weight, you know.

THE ADVISABILITY OF THE REPEAL OF THE ACT OF 1850.

I shall, in the brief time allotted to me, give some reasons why I favor the law as now codified in §4334 of the Code of 1895, making it error for judges of the superior courts of this State to express or intimate in charges to juries their opinions as to what has or has not been proven. What I have to say is, however, rather historical than argumentative.

I have sought to obtain the opinion of legislators and Supreme Court judges on the law as it existed prior to the passage of the Act of February 12, 1850, especially the opinion of those on the bench and in the legislature at the time of the passage of that act; considering that these men were well qualified to judge of the expediency of the law as it then existed, both because of the distinguished talents of many of them, and for the further reason that they had ample opportunity to see it tried.

In the Senate Journal I find this: "Tuesday, November 20, 1849. Mr. Clark reported a bill to prevent the judges of the several superior courts in this State from making certain charges or giving their opinions to or in the hearing of the jury, and to define the same as error, which was read the first time." This Clark was no other than our well-beloved Judge Richard

H. Clark. Mr. Bailey (David J. Bailey) offered some amendments, changing the form, but not the sense of the bill, which were accepted, and the bill passed the Senate, so far as appears, without opposition. In the Senate at the time, among other well-known men, there were, in addition to Richard H. Clark and David J. Bailey, Andrew J. Miller of Richmond, Blount C. Ferrell of my own county of Troup, William B. Wofford, who was President of the Senate, and Joseph E. Brown. In the House February 12, 1850, on a call for the yeas and nays by Mr. McDougald of Muscogee, the Journal shows 52 for and 35 against the bill. Among those voting for the bill were Young L. G. Harris of Clarke, Geo. W. Fish and James A. Nisbet of Bibb, Geo. P. Harrison of Chatham, Charles J. Jenkins of Richmond, L. J. Gartrell of Wilkes, Joel W. Terrell of Coweta, Jas. H. McWhorter of Oglethorpe, John G. Westmoreland of Pike, Robert P. Trippe of Monroe, and John L. Erwin of Washington. Among those voting against the bill were, Edmund B. Gresham of Burke, Thos. Akin of DeKalb, Joseph DuBignon of Glynn, William J. Lawton of Screven, and Theophilus J. Hill of Walton. Among those not voting were, Geo. O. Dawson of Greene, Edmund H. Worrell of Talbot, and Linton Stephens of Taliaferro. The weight of numbers and, so far as I am able to judge, the weight of talent were for the bill.

What was the opinion of our Supreme Court of 1849-50, Lumpkin, Nisbet and Warner? I have found no expression from Judge Warner. Judge Nisbet said in *Holder v. The State*, decided in 1848 (5 Ga. 442): "As I took occasion to say, in the case of *Anderson and Others v. The State of Georgia*, the right of expressing an opinion on the facts, is of doubtful propriety. Indeed, I there said, 'I do not think that the court ought to give an opinion, but that the judge's power should be limited to summing up the facts, and to inferences of law deducible from them.' I must here repeat the same conviction. In practice, it controls the verdict in nine cases in ten. It therefore defeats the right of trial by jury, guaranteed by the Constitution, and relieves the jury from that responsibility which is necessary to a proper discharge of their peculiar duty of giving judgment on the facts. It seems to me that it is particularly wrong in view of the fact, that, except in a few distinguished instances, the verdict of a jury cannot be reached for a finding contrary to the facts, by any corrective tribunal. Through the

jury, therefore, the judge, as a general rule, is made irresponsible for his opinions on the evidence. I am aware, too, that there are cases where such a power in the court is not only desirable but necessary. In cases of great complexity, it is right that the jury should have the aid of the court in making up their verdict. How to limit the right of opinion, so as to secure it from abuse, and yet secure its advantages, is the difficulty." Cases of complexity involving accounting, etc., it may be remarked, have been provided for by the appointment of auditors. And it is customary, where the facts of the case are complicated and involved, for the judge to submit certain questions of fact to the jury, and upon their finding to frame his judgment or decree.

Judge Joseph Henry Lumpkin, in *Robinson v. Schly and Cooper*, decided in 1849 (6 Ga. 526), said, in commenting on the practice of the judge expressing his opinion on the evidence: "The growing intelligence of our people, and our special jury trial render this practice wholly unnecessary. The jury *are sworn* to express their opinion upon the facts, by their verdict. The *opinion* of the judge is not given, even under the sanction of his oath of office. *He is sworn* only to administer *the law*. Why should the presiding judge be allowed to declare his opinion upon the facts without being sworn, when no one else, neither juror nor witness, nor any other person, is permitted to do so? I trust that another legislature will not intervene without its being made a distinct ground of error, for the court to *intimate* its opinion to the jury, upon the facts and circumstances of the case. Until this is done, trial by jury, if not nominal, will certainly not be what it has been fondly proclaimed by its eulogists—'A privilege of the highest and most beneficial nature.' Better abolish it altogether, if it cannot be protected from the control of the co-ordinate branch of the Judiciary. Life, liberty and property derive but little security from the constitutional *form* of trial by jury, if its constitutional *force* is undermined and destroyed."

It would probably be a difficult problem for the profoundest student of history to say what Jury Trial was when it first originated. From the generally accepted fact, however, that originally juries were summoned from the vicinage and rendered their verdicts, not from evidence submitted on the trial, but from their own knowledge of the circumstances, I should think that if there

were judges, they did not *then* express any opinion on the sufficiency of the proof for the very palpable reason that they *could not*, the facts being solely within the breasts of the jurymen summoned to try the case. It seems probable therefore that in the *original* jury trial, no opinion on the facts was expressed by the judge, but that judges arrogated to themselves this privilege, as power so often acquires greater power by almost imperceptible increments. Therefore the wisdom of the saying "Eternal vigilance is the price of liberty."

I do not see in the passage quoted from Blackstone any authority for the practice of the judge giving an opinion on the facts. He says, Book III, paragraph 375: "When the evidence is gone through on both sides, the judge in the presence of the parties, the counsel, and all others, sums up the whole to the jury; omitting all superfluous circumstances, observing wherein the main question and principal issue lies, stating what evidence has been given to support it, with such remarks as he thinks necessary for their direction, and giving them his opinion in matters of law arising upon that evidence." The language is "opinion in matters of law." See also, *Johnson v. Kinsey* (7 Ga. 431). But conceding for the sake of the argument, that it was the practice in England in 1776 for the judge to give his opinion on the facts, and therefore the common law of this land, will it be contended for that reason it is wise to-day? There certainly was more reason for the practice then when ignorance was the rule and education the exception among the common people; but as education moves forward in its onward march the alleged objection, namely, the incapacity of jurors, has less and less to commend it. Certainly, juries coming from the county of witnesses' residence are better qualified to pass upon the weight and credibility of testimony than the judge to whom the witnesses are strangers. How true it is that now you often see upon juries men whose discriminating judgment is not surpassed by that of the judge upon the bench. Even in 1849 Judge Lumpkin said, in *House v. Potts* (6 Ga. 345), in commenting upon a statute of North Carolina forbidding the judge to give an opinion whether the fact is fully proven, etc.: "It is not my purpose to discuss the wisdom and expediency of such a law. I would take the liberty of suggesting, however, that the general diffusion of knowledge and education among the people of this country much better fits them for weighing and com-

paring the evidence, than in any other nation or age since the institution of trial by Jury." Doubtless for these reasons, and others I have not attempted to give, the tendency of legislation in the United States has been in the direction of our Act of 1850, so that now twenty-nine States, including Georgia, have constitutional or statutory provisions similar to ours, as against ten States having still the English practice. In New Hampshire, in a recent decision on this question, there is a dictum to the effect that the practice of expressing an opinion on the weight of the evidence is obsolete. *State v. Pike*, 49 N. H. 416. See Vol. 11, Enc. Pl. & Pr. 102, note, for other New Hampshire decisions to the same effect. In Wisconsin the expression of an opinion on the evidence is permitted in civil cases; in criminal cases an opinion upon the weight of the evidence would probably be erroneous. *Benedict vs. State*, 14 Wisconsin, 423.

Does not greater reason now exist than ever before for the law as we have it? The growth of great trusts and powerful combinations of capital, having almost unlimited wealth, wielding such immense influence as in some States to practically control legislation and, it is to be feared, in some jurisdictions not without their influences on the bench, present greater dangers than ever before in the administration of law and justice.

If ever there should come a time when *one* of our Georgia judges can be corrupted or swerved even a hair's breadth from his plain duty, is there not a greater probability that *one man* may be corrupted or influenced than the *whole people*? The proposition needs no argument. It is not sufficient to tell us that our present judges are true and unpurchaseable; that may be and doubtless is true, and it is devoutly wished it may ever continue to be so. But great rights, palladiums of our liberties, like *habeas corpus*, uninfluenced and untrammelled trial by jury, do not have their being from any present need or present danger, but for what *may* happen, for the future and those coming after us. I must insist that our law is best as it is.

Mr. Longley: Mr. President, I don't desire to make any remarks further than to say that I heartily indorse the "Dumb Act." I believe candidly that our judges, like sheep before the shearers, ought to be dumb on all questions of fact. The judge for the law and the jury

for the fact. They are just as able and competent to decide questions of fact as the judges.

The President: Judge Hillyer, I believe you are a friend of this measure, and as everybody so far has opposed it, I will call on you for a word in its favor.

Mr. Hillyer: Mr. President, I will detain the Association but a very few minutes. I am second to none in my veneration for the utterances of our fathers, but we all know that it is the constant work of the legislature to make changes and amendments in both the judicial and legislative practices which come down to us from them, and I don't think the present instance is to be distinguished from other cases in which the present generation may consider whether an amendment or change may be required. It is unjust to make any comparison between what veneration is due from us to those fathers who preceded 1850 as compared with those of that particular date, but I think the true test of this question is to judge the present state of the law as to methods and remedies and effect of remedial procedure by its results. Now an immense amount of thought has been particularly directed to the necessity for reform in criminal law and criminal procedure rather than to civil remedies and practice.

What are the facts? What are the evils by which we are to day confronted? The true comparison here is not what judges and legislators wrote and said in 1850, as compared with what we may think and write and say in this day, but rather under the laws and procedure existing in that day to what extent were the innocent protected in their rights. I am old enough to have lived prior to 1850. I was not then in the practice, but I am old enough to remember, and I know that under the protection of the laws of our State then it was possible for a citizen to go in and out in the performance of his duty, in all his avocations, or in his pleasures, day or night, with safety to his person and his property. I have had occasion to say

in this presence on a previous occasion, and it cannot be denied, that prior to 1850 the grosser crimes were almost unknown in our State. It would be above rather than below the mark to say that in the annual rounds on the circuit our judges were called on to try more than two capital cases in a year on an average; one in the spring and one in the fall would make a fair average. That I know was the case in the Western Circuit, even for some years after the passage of this particular act. Now I don't mean to say that the greater prevalence of crime in later days is attributable to this act. For one, I take it simply as a part of the system or order of things under which we are living. It is not confined merely to our own State, but the whole United States show homicides amounting to 10,000 a year and over from pistol wounds; add to these those not fatally wounded and the number would probably reach 50,000 every year. As to the number of burglaries and robberies and other grosser crimes, we have no such accurate statistics upon which to make a comparison between the population of the State of Georgia and the United States. There are between two hundred and three hundred and fifty homicides annually in our State. There are in the United States twenty-five homicides a day on an average; two hundred persons shot or stabbed in a day. Mr. President, more people have been killed and wounded in the United States by violence since this body has been in session than were lost by wounds by the "Rough Riders" in the battles around Santiago.

Now the question is, what will you do about it? I don't say that the repeal of this act would remedy all of these evils, but repeal the act and it is certain that this increase of crime will be met by means more speedy and more effective. Compare the returns in this State, with laws that lean so much towards the escape of the guilty, with the countries in which there is a more rigid enforcement of the law. Homicides in England average one to

four millions annually. According to that we should have eight or ten in Georgia annually instead of three hundred. There are more homicides in ten or twelve counties in the United States than there are in many of the larger states in Europe. And why? Well, one difference existing is that in England and in Prussia the judges exercise the functions of judges, and the judges are revered. They are looked up to, and instead of having flippant remarks made, the Court is looked on as one worthy of confidence. As a consequence more correct results are obtained in the administration of justice. Now it has been said here that there are twenty-six other States in America which have provisions in their laws similar to the one on our statute book. I have not critically examined them, nor have our friends quoted them. I think, however, you will find that few, if any, have statutes which are as radical as ours. Our statute does not make it reversible error, ground of error, but it imperatively requires a new trial where the judge expresses or intimates an opinion, whether it does any harm or not. Mr. President and gentlemen, our reports are full of cases in which the Supreme Court have reversed the judgment of the court below, and in the same breath have said that the verdict was right and ought to have stood, and they would let it stand, but by the imperative language of this statute they were required to set it aside and grant a new trial. In most of the cases cited in these papers where the verdicts have been set aside on this technicality, the Supreme Court have offered an apology for setting it aside. The Court have been very careful to let the public know why they did a thing contrary to justice, giving as a reason that it was owing to the imperative language of the statute by which the court is controlled. Gentlemen, as I said here on a former occasion, in 1894, and again in 1896, as members of this Association and as members of the profession, it is incumbent on us, and the public looks to the legal profession, to urge the

remedies for these evils. I remember to have said in 1896, and it has well been said here that sometimes force is added by repetition, and I believe that applies with particular force to what I want to quote. I cannot lay my hand on it, but in the comparison made the writer shows that this is the only instance produced anywhere where the State has carefully laid aside the better means, the more skillful means, and resorted to one less so. The illustration is that when a person meets with an accident and a bone is broken or an artery cut, we do not go haphazard out in the street to get some one to deal with the case, but we send for a skillful surgeon who knows when and how to cut. So it should be in judicial investigation. I do not appreciate but am rather surprised at the idea that the country will be ruined if the judges are allowed to merely express an opinion. It seems to me that it is not founded on good reason. Conservatism is appealed to—the conservatism that has existed for fifty years, but where is the conservatism and experience that existed for one hundred years previously, in which men were protected in their rights and property? The rule on this subject was changed by the Act of 1850, and why cannot it be reviewed in the light of present experience? For my own part I trust not merely this measure, but the others still open before the Legislature, shall still be urged and efforts made to procure legislation, remedial legislation, from that body that shall cause many reforms in the criminal law.

Judge Bleckley: Would it interfere with the established program for me to be heard, very briefly, at this point? I am in a nervous condition that makes it desirable for me to speak now, if I speak at all.

I think I am a member of this Association, although I am not here now as a member, but as an invited guest. I consider myself as holding a brief with the rest of you in the trial of this case. I denominate it in my own mind a case proceeding *ex parte*, and would enter it on the

docket "*ex parte* Truth." Truth is the client of us all. There is but one party to the case. I know we all have the same object—to reach a correct verdict in favor of truth. We have a higher reward than any pecuniary compensation or the triumph of victory—the triumph of truth—if we arrive at a just and proper conclusion.

There is a striking analogy between the question now open, and what is called the money question. We have all heard of "gold bugs," but I believe no "silver bugs" have appeared in any of the political discussions, and this is because the "silver bugs," in theory, are bi-metalists, and are opposed to the "gold bugs" because they want both gold and silver. In other words, I should say that the truth in this question lies between the persons entertaining the mono-juridical theory and the bi-juridical theory. Now I was delighted with the able discussion of our new brother (Mr. Burnside), if he is new to you, he is to me, for really I don't know him, but I now know him as a lawyer, a man having the true legal touch, for I am an expert in legal music. I was struck with his music. He thinks we must have a "gold bug" or a "silver bug." He believes that we must have a mono-juristical system, no matter which way you take it. He says the verdict is made by the jury or made by the judge. I say that the true verdict involves the cooperation of the judge and the jury, and that there are thirteen jurymen instead of twelve. That is my doctrine. It is historical. It is admitted in the case, that the judge in the trial by jury, as we derived it from England, expressed an opinion, and it was his duty to instruct them throughout the case. In the trial the judge cooperated with them. If the jury were the philosophers, the judge was the logician. He formed an opinion upon the evidence, if not in writing, and drew inferences according to the laws of logic. If all the evidence brought out was direct the jury would not need the aid of the judge. If the jury had evidence of their own you would not need any logic. But we do not have evidence

plain and direct, such as the mathematical proposition that two and two make four—we do not have evidence of that sort. In our courts we do not try cases upon what people know by their own senses; they have to make inferences and apply the laws of logic, and that is why a verdict is a combination of fact, law and logic. Now there is more logic seated on the bench in any superior court in this State than there is seated in the jury-box. There is more logical power and more logical training on the judicial seat than in the seats occupied by those who make our verdicts. Why, gentlemen, there is no comparison in competency or qualification to draw inferences from the facts; but still, the judge is only one individual, and I think it would be improper to allow these twelve others to be bound by his logic, but he can supply them with such logic as he may have in stock, or any he may be able to procure. I have seen in the few cases I have tried in the superior courts—I never presided over many, one or two when the judge was disqualified—that a judge could use all the logic he had. Well, the whole thing is this, we have through our juridical system—I want to ask our friend here whether I should say juridical or juristical?

Mr. Gregory: Whichever one you say, sir.

Judge Bleckley: The whole question is to obtain the best results, and to give the jury the benefit of the judge's training and his logic so that we can get the best music.

The President: Major Meldrim, you are opposed to the repeal, and if you can you will be in order to answer the Chief Justice.

Mr. Meldrim: Do what?

The President: Answer the Chief Justice.

Mr. Meldrim: No man has ever been able to answer the Chief Justice.

Judge Bleckley: I am not Chief Justice, I am only associate counsel in this case.

Mr. Meldrim: I don't know that I can add anything to what has been said in this discussion. Under the views I

entertain it can have no marked interest, but seems to me to be futile. In 1850 the present law was enacted. It is in the present Constitution of our State, and it is a fact that a majority of the States of the American Union have adopted similar legislation. To repeal the act of 1850 will not repeal that provision in our Constitution, which declares that on the criminal side of the court juries are the judges of the law as well as the facts. What benefit, therefore, could we derive from the repeal of the act of 1850, unless we at the same time could repeal that provision of our Constitution? I have, however, been struck by this proposition: the gentleman who read the first paper, as it seems to me, bases his argument on false premises. He assumes that the judge of the court, because he can grant a new trial, should, therefore, be permitted during the course of the trial, to express an opinion upon the evidence. I dispute the premise. I insist that the trial judge has no right to grant a motion for new trial if there be any evidence to sustain the finding. He says that the judge of the superior court has a right to grant a nonsuit; he has a right to determine whether the case shall be passed on by the jury. I dispute the proposition as a matter of law. The judge has a right to grant a nonsuit where there is no fact proven, or where there is an inability to prove any fact that would sustain the plaintiff's case, but if there be a single proven fact, or where there is a single inference from facts proven, then the court has no right to grant a nonsuit. I have given in the proposition, it seems to me, the whole law on which he bases his argument. In the decision in 57th Georgia, the precise question arose from a decision made by Judge Charles McDonald, wherein the judgment was reversed because he attempted to direct a verdict. Now it is said in that decision that the judge has a right to express an opinion; he has a right all along to express an opinion on the facts, provided he did not direct a verdict. Now it is stated, or has been stated, that

in nine cases out of ten the jury will be governed and controlled by a clean-cut and strong expression by the judge. If the judge has not the power to impress his own opinion upon the minds of the jury, then his directions to the jury will not be observed or followed. If you concede that the old law was right, then you concede that the judge of the superior court has a right to express his opinion ; you concede that in nine cases out of ten the jury will be governed and controlled by that expression of opinion. If the jury is not to be governed by the expression of opinion, then why express the opinion ? If it is to fall upon barren soil, and bring forth no good fruit, why express the opinion ? No, sir, the clean, strong and able judge, who expresses directly and forcibly his opinion, does control the jury in its verdict. Now the vice of the old law consisted in the fact that the judge was enabled to control the jury by indirect methods. He was permitted to express an opinion and control the jury by indirection, but he could not control their verdict by direct methods ; hence the legislation was wise. The legislature stepped in and said, "No, you cannot argue, you cannot by suggestion or intimation obtain a verdict from them from which there is no appeal. You must not express an opinion, but you must leave the question of fact to the jury, and then if they err, there is a remedy. If the verdict is without evidence to support it, if there is no conflict in the evidence, and the verdict is so conflicting as to shock the moral sense, to suggest bias and prejudice, then you can sit in judgment on the handiwork of the jury, but you shall not sit in judgment on' your own faults." That decision has found expression in comparatively recent legislation in this State. Where a judge of the superior court bench rises to the supreme court bench, that judge of the supreme court is disqualified from passing judgment on the decisions which he rendered in the court below.

The principle is followed more or less throughout our legislation, and throughout the legislation of other States,

and has been crystallized in the paragraph of our own constitution, which declares that the juries shall be the judges of the law as well as the fact in criminal cases.

One word in conclusion. My friend Judge Hillyer, in his argument has touched one question. He would probably deny that the administration of the criminal law is defective except in one respect. In this present day, I dare say that in the administration of the criminal law the most striking characteristic is indecent haste. I stand here to protest, because there is a loud clamor for the courts to be convened instantly. While there is great excitement, juries are being impaneled and men tried for their lives. The speed we are making is sometimes obtained at the sacrifice of justice.

My friend has remarked that we all know the whole system of jurisprudence would not be imperiled because the judge merely expressed an opinion. The mere expression of opinion from the judge on the bench, which is a clean-cut statement of all the facts, stated to the jury would in a majority of cases control their verdict. If we could always have men on the bench such as we have to-day in Georgia, there might be no objection to it. In my library with the book which gives the lives of the Lords Chancellor and Chief Justices of England, I have another book quite as large, called the "Atrocious Justices." There were enough atrocious judges in England to fill a book. It may be that the time will come in Georgia when we will have at least one judge to be added to that book. The court organized with Lumpkin, that man of pure thought, who lived for all that was honorable and good, and Nisbet, with his wonderful learning, appealed to the legislature of our own State, and it was in obedience to that appeal from that great tribunal, with Nisbet and Lumpkin on the bench, that the people of Georgia through their legislature acted. It was in obedience to the same idea that a great majority of the States in the American Union have fallen in line, and I believe

that any effort on the part of our association to repeal that act would not only be useless but unwise.

The President: The next in order is the paper of Mr. C. P. Steed.

Mr. Steed: Most of what I had to say on the subject in the way of judicial expression has already been said, so I will confine myself to what I have written briefly in conclusion.

THE ACT OF 1850.

Georgia is one of that majority of States in the Union which by statute prohibits the trial judge from expressing to the jury any opinion on the facts of the case on trial.

A few opinions of the judges delivered about the time that law was enacted may indicate the reasons of its enactment.

Nisbet, judge, in *Holder v. State*, 5 Ga. 442, says: "Indeed, I then said, 'I do not think that the court ought to give an opinion, but that the judge's power should be limited to summing up the facts and to inferences of law deducible from them.' (*Anderson v. State*.) I must here repeat the same conviction. In practice it controls the verdict in nine cases in ten. It therefore defeats the right of trial by jury guaranteed by the Constitution and relieves the jury of that responsibility which is necessary to a proper discharge of their peculiar duty of giving judgment on the facts. It seems to me that it is particularly wrong in view of the fact that, except in a few distinguished instances, the verdict of a jury cannot be reached for a finding contrary to the facts, by any corrective tribunal. Through the jury, therefore, the judge as a general rule is made irresponsible for his opinions on the evidence."

Judge Lumpkin in *Johnson v. Kinsey*, 7 Ga. 431 (1849), says: "It is most obviously wrong for the presiding judge to single out an isolated fact and express himself thus strongly respecting it: it is well calculated to distort its importance in the estimation of the jury and to concentrate their attention too intensely upon it to the undervaluing of the rest of the evidence.

"To sum up means, *ex vi termini*, to present all the proof to the consideration of the jury. And unless this is done it had better be omitted altogether. In some of the States it is pro-

hibited by law; in others it is made a distinct ground of error for the judge to intinate his opinion upon the facts or any portion of them. And this perhaps is the better practice."

The same judge says in *Potts v. House*, 6 Ga. 344 (1849): "The legislature of North Carolina has passed a law forbidding the judge to give an opinion whether a fact is fully or sufficiently proven, such matter being the true office and province of the jury. It is not my purpose to discuss the wisdom and expediency of such a law. I would take the liberty of suggesting, however, that the general diffusion of knowledge and education among the people of this country much better fit them for weighing and comparing the evidence than in any other nation or age since the institution of trial by jury."

In *Colquitt v. Thomas*, 8 Ga. 267 (February term, 1850), Judge Nisbet remarks: "I say then, that the obligation of the courts is to maintain exclusive and unimpaired the trial by jury, not in form but in fact and substance. To fulfill this obligation: trials before juries ought to be so conducted as to constrain the jury to know and feel that the sole, absolute responsibility of trying the facts is upon them. They ought, by the forms of procedure and by the direct instructions of the court, to be made to feel that this responsibility is upon them; that neither the court below nor this court, nor any other power can share it with them. Each party, even though each has a right of applying for a new trial, is entitled in the trial of his cause to the whole intellect of the jury, the full sanction of their oath, and the industry and attention and conscientiousness which a sense of responsibility is sure to prompt and inspire. Any remarks therefore, falling from the court, however unintentional, to weaken this sense of responsibility is wrong."

Justice Lumpkin, in *Robinson v. Schly*, 6 Ga. 526 (May term, 1849), says: "Why should the presiding judge be allowed to declare his opinion upon the facts without being sworn when no one else, neither juror nor witnesses, nor any other person, is permitted to do so? I trust that another legislature will not intervene without its being made a distinct ground of error for the court to intimate its opinion to the jury upon the facts and circumstances of the case. Until this is done, trial by jury, if not nominal, will certainly not be what it has been proclaimed by its eulogists, 'a privilege of the highest and most beneficial nature.' Better abolish it altogether if it cannot be protected

from the control of the coordinate branch of the judiciary. Life, liberty, and property derive but little security from the constitutional form of trial by jury if its constitutional force is undermined and destroyed." . . . "The growing intelligence of our people and our special jury trials render this practice wholly unnecessary."

And so the same judge, in 14 Ga. 432 (January term, 1854), says: "The presiding judge must not say or assume or even intimate that one fact or another has or has not been proved. But this he must leave, and I think very properly, to the unbiased and the uncontrolled opinion of the jury."

Judge Bleckley, in *Bohler v. Owens*, 60 Ga. 188, says on the subject of negligence: "It is a mistake to suppose that the judge is better informed concerning these things than the jury. On questions of fact the jury are the chosen experts of the law."

Chief Justice Jackson, in *Frank v. City of Atlanta*, 72 Ga. 344, says: "The reason on which jury trial on facts has always rested is that men of the vicinage will know more of the locality and surroundings ordinarily than the judge on trials of real estate; and on all trials of fact involving the character and truthfulness of witnesses—usually persons in the neighborhood of the contention and neighbors of the jurors—the jurors will be enabled more certainly to reach the true facts of the case and make a better verdict than a judge who is usually a stranger to the locality as well as to the witnesses."

A recognized and recent authority (*Ency. Plead. & Prac. "Instruction to Juries"*) says: "Not infrequently judges evinced partizanship in their charges, and moulded verdicts to their will, and juries as frequently shirked responsibility and really adopted the opinion of the judge, finding the verdict as he directed. It was to put a stop to this and to secure the constitutional right of trial by a jury and not by a judge, that the various limitations on this common-law power were imposed by the Constitution or by the statutes. The trend of modern action, both legislative and judicial, is to watch over and protect very jealously the legitimate power of the jury, and to prevent the court from overstepping the line which separates law from fact."

This authority states that the judge is forbidden to express any opinion on the facts in Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana,

Maryland, Massachusetts, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oregon, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia—27 States.

It will thus be seen that Georgia is with the majority on this question and in line with the prevailing tendency and sentiment throughout this country.

This law has been called the "Dumb Act." But is it a dumb act? What does our Supreme Court say further and in later cases to indicate that it is not a dumb act?

In *Anderson v. Trebble*, 66 Ga. 588, the court was called upon to decide that no means are provided "for conveying to this court the cadences of the judge when he instructs the jury for one side, and again its emphatic swell when he is instructing for the other."

Again in *Rountree v. Gurr*, 68 Ga. 292, the court is again constrained to hold that an "exception to the manner or tone of voice of the court in delivering his charge is not reviewable by this court, there being no way by which it can be reflected here or its influence estimated."

Thus a judge may indicate to a jury what opinion he entertains of the facts or evidence without the fear of reversal. "Cadence," "emphatic swell," "manner," "tone of voice," are far more powerful means of expressing opinion than a bare, commonplace statement. The truth of this doctrine could no doubt be attested by that young lawyer of whom the story is told that he came to an older friend in a state of great distress and on being asked what was the trouble, said that his sweetheart had rejected him. The older man told him not to be troubled about that for no woman meant anything by saying "no" especially the first time, and that he must go back and try again. "Ah," said the young man, "but she didn't say 'no,' she said 'naw'!"

But conceding that it is a "dumb act," the question then comes, have the conditions existing in 1849, which prompted two of our greatest judges to urge upon the bar and the people the principle embodied in this act of 1850, so changed as to lessen the need of that law? Is there a less "general diffusion of knowledge and education among the people of this country?" If our people in 1849 were "much better fitted for weighing and comparing the evidence than in any nation or age since the con-

stitution of trial by jury" are they less so now? If twenty years ago the jury on questions of fact were the "experts of the law" are they less so now? . If in 1878 it was a "mistake to suppose that the judge is better informed concerning these things than the jury" is it any less a mistake now? Have the judges progressed and the juries retrograded? If the juries of to-day are less competent than the juries of 1849 or 1878 is it because the manhood of the country has degenerated? If that is not the reason, and no one will say so, is it because the men who serve on the juries are incompetent? If this be true what is the remedy? Is it to take these men irresponsible, unthinking, easily led and influenced, and give the judge, already powerful in their eyes, the further power to tell them what he thinks about a matter concerning which they are incapable of properly thinking? Is that the remedy? Is that the way to preserve trial by jury? Or is the remedy to abolish jury exemptions, to reform the methods of selecting the panels, and to instil by law a little more unselfish patriotism and public spirit into the minds of those men who shirk this public duty of serving on juries and devote their intelligence and most of their time to their private interests or pleasure and their spare time to condemning the law, the courts, and the juries? If we are to increase the power of the judge and keep the degenerate jury to record his opinions and draw their per diem with equal complaisance, would it not be better for public justice and the public treasury to abolish the pretence entirely? Yet, who would dare advocate the abolition of trial by jury, defective as it may be?

The jury is the most democratic institution on earth. Its foundations are among the people. Its steps go down to the foot of the people and all may enter its precincts as equals. Every man who regards the vitality of democratic life and doctrine must see to it that this forum is kept pure, free, and open; that those who have the right and the will to sit there may do so; that those who should sit there and will not, shall be required to do so; that the opinions there formed shall be free from any dictation or control, political, plutocratic, or judicial, and the verdicts there rendered shall speak the truth as it appears to men who must themselves submit to its arbitration.

The judges of this country have done a great work. They have stood between the whims of the people and the shifting demands of party on one side and steadfast constitutional govern-

ment on the other. Some of the best law under which we live is judge-made. The system of equity jurisprudence built up by the English chancellors is not a greater work than the extensions of that system by the American judges and the great system of constitutional law which they have constructed. They have done their duty; let them not be expected to do more. The judge is an expert on the law, or if he isn't, he may become so; but there is no school, save that of common experience, which will turn out experts on questions of fact. The men from whom our juries are drawn have grown up in that school. It is not meet that the experts in either of these spheres should attempt to invade the other or dominate both. The rule which prevailed in Georgia before the war that the jury was the judge of both law and fact in criminal cases has been overturned by judicial construction, and now the jury is the judge of the law in no case, and the judge is judge of the facts in no case where the facts are disputed. So let it be.

Which existed first, the judge or the jury as the arbiter of causes? If the judge, then why did he not continue to exist as the sole tribunal? If he was the arbiter of causes at a time when in intelligence and learning he stood above the masses of the people, like the mountain above the plain, why was it he did not continue to be such arbiter when the mountain was lowered or the plain raised until a level of intelligence was more nearly reached? The institution of the jury as the arbiter of the facts in the case is not the result of a theoretical or arbitrary demand. It came in natural response to an awakened intelligence and a slowly matured sense of popular liberty and equality among the people which rebelled against the right of any one man to monopolize or take to himself the sound common sense of the community on questions of fact involving common experience and observation.

The judge may now grant a nonsuit or direct a verdict. If he errs the error may be corrected. But if the question is submitted to the jury, not always composed of the most upright and intelligent men, for their opinion, and he is permitted to express to them his opinion, then his action is not subject to review, however much it may have controlled the verdict.

The truth is not always easily found in a judicial investigation. This is because, first, few men, if any, are able to see and tell

the truth absolutely and completely; and second, because few men are willing to see and tell the truth absolutely and completely. This is human nature and applies alike to judges, jurors, and witnesses. And out of this situation there is nothing that can so well evolve the truth as the consensus of opinion of twelve upright and intelligent men of the vicinage, bred in the common school of experience and touched with a sense of our common infirmities.

The President: The other name on the paper is that of Mr. Jordan, who will conclude the regularly prepared papers. The matter will then be left open for voluntary discussion.

I do not see Mr. Jordan present; the subject is open for further discussion if you desire.

Mr. Levy: Mr. President, in the matter now open to discussion, it would seem impossible to add to what has been said in dissent to the repeal of the "Dumb Act," but I want to volunteer a suggestion, somewhat acquiescing in the suggestion of the ex-chief justice that we would have a jury composed of thirteen men in the trial of matters of facts, or we would have a jury consisting of one, and that one the judge presiding. I also think that if there is a divinity that hedges in a king, that same divinity hedges in the court. I think the repeal of the "Dumb Act" would have the effect of diminishing the dignity and power of the court instead of adding to its influence and importance. I believe in every case when the jury retired from their box to the jury-room, in addition to the case, the questions submitted and the witnesses, the judge would be upon trial before that jury, and a large part of their discussion, and a large part of their difficulty in arriving at the truth, would be in the endeavor to eliminate from their minds the attitude of the judge, and he would be the subject-matter of discussion. If he could express an opinion it would add to the difficulties both of the court and of the jury. If the court had a strong leaning it would be difficult for him to express an unbi-

ased opinion, and I take the stand that he is no more competent to express an opinion on questions of fact than any other intelligent juror. If the verdict is strongly against the weight of evidence he surely could not reverse himself after expressing his opinion. He could not reverse the opinion he had expressed in an endeavor to direct the jury. You would find evils follow his attempt to exercise the authority imposed upon him. The jury is inclined to accept the law unhesitatingly from the court, but when he attempts to assist the jury in making their verdict, when he sits in the jury-box to make thirteen jurors, you take from the judge a good deal of his dignity, and put him before the jury to assist them with their verdict they would question the logic of his conclusions and the purity of his motives. It would be a matter for the jury to speculate upon what his relations to parties were, what his political associations were, and what his relation to this party and to that.

I believe we would strike a vital blow at our judicial system if we were to adopt the resolution and throw the influence of this body to invite the legislature to repeal this "Dumb Act."

Mr. Lawton: I am very much opposed to anything that will cheapen the influence of this association.

The object, of course, of the discussion of the advisability of the repeal of the "Dumb Act" of 1850, is to obtain from this association an expression of its opinion by way of advice to the legislature. I must object to this being done, for it is going to be impossible to obtain from this association an expression with any approach even of unanimity.

If the association should recommend the repeal of the "Dumb Act of 1850," it would be by a small majority, and if we were to recommend the retention of the act, it would still be by a small majority.

Now, I desire that the recommendations of our association shall have force and weight, and it seems to me that

it is undesirable to cheapen those recommendations. The only way not to do this is to confine those recommendations to matters where it would have some force and some effect, and certainly the recommendation of a small majority would not have this effect. It would simply be an expression of opinion. I will therefore offer the following resolution :

"Resolved, That this association has heard with much interest and profit the able discussion as to the advisability of repealing the "Dumb Act of 1850," and deems it unnecessary to express its opinion on the question."

The resolution was adopted.

Mr. Burton Smith: I move that the reports received on yesterday and the day before be passed for discussion until the next meeting.

Seconded and adopted.

The Secretary: There is one paper to which I wish to call attention. Our program contained the statement that Major J. C. C. Black, of Augusta, would address the association on the subject of "Law and Lawyers." Major Black has been unable to attend, being confined to his bed by a serious illness, but he has sent his paper to the association and I think it is but right that we should take some notice of it. It has been the custom heretofore for these papers, where the authors were not present, to be published in the proceedings, and I would suggest that this paper take that course.

Mr. Lawton: I think any one of us who has had the pleasure not only of reading anything that Major Black may write, but of hearing him speak, would earnestly desire to hear Major Black. I move that we earnestly request Major Black to deliver that paper at our next meeting, and that in the meantime it be not published.

Seconded and adopted

A recess of ten minutes was had.

The President: We have almost reached the end of what has been a delightful and successful session of the

Georgia Bar Association, but it would end in failure if we did not hear from our father in the law, Chief Justice Bleckley.

Judge Bleckley delivered an address, giving as his subject "Human Seniority." (See Appendix Q.)

The President: What is the pleasure of the association?

Mr. Terrill: I move that we adjourn *sine die*.

Seconded and carried, and the association stood adjourned.

APPENDIX A.

A CENTURY'S PROGRESS IN LAW.

THE PRESIDENT'S ADDRESS, BY

JOSEPH R. LAMAR,

BEFORE THE SEVENTEENTH ANNUAL SESSION OF THE GEORGIA BAR ASSOCIATION, AT WARM SPRINGS, GA., JULY 4, 1900.

Gentlemen of the Georgia Bar Association :

July 4th, 1900! a Nation's birthday! a Century's close! a date that compels a look backwards, and challenges a comparison of the end with the beginning of the century. Between A. D. 1800, and A. D. 1900, humanity made its greatest material progress—from tallow candle to arc light; from stage-coach to vestibule train; from sailing vessel to ocean greyhound; from spinning-wheel to cotton factory; from forge to blast furnace; from flint lock to Gatling gun—each a marvel, and in each a revolution. But, so sated with wonders are we, that the mind refuses to be amazed at what has been done, at what is being done, or at the prophecies of what will be done. It refuses to listen to the oft-repeated story of progress.

If this be true as to those achievements which appeal to the eye—if even the spectacular and dazzling have lost their power to amaze, it is inevitable that any advance in the quiet and unobtrusive departments of life should be ignored, if not actually denied. When everything else rushes so fast, how natural to say that the law has stood still. And, in truth, the profession is a stern judge of its own shortcomings; upon many occasions, notably at the first meeting of this Association, it was charged that the law had not only not kept pace with the march of events but had actually lost ground. Still, without shutting our

ears to many severe and just criticisms, and frankly admitting that there is great room for improvement, we may yet confidently claim that the law has made great, though not conspicuous or striking, advances. With all confidence we may challenge comparison of what it is to-day with what it was one hundred years ago.

Let me disarm your criticism. A statement of the changes wrought within the century has in it nothing original. Necessarily, it must point to those things with which you are familiar—so familiar indeed that you do not realize how strange they are—and therefore merely to name the reforms and tell how recently they have been adopted will not impress upon you how great they really are. We must devise some plan, even if it be not novel, to quicken our imagination. We must, for a moment, change our point of view.

But first, in order to make any comparison, we must have in our mind's eye a picture of the state of the law at the beginning of this century; and that picture is hard to find, for in the year 1800 we had practically no American law; the Supreme Court of the United States had met term after term, and adjourned without rendering a single decision; all of its rulings prior to 1800 are printed in less than 400 pages. There was no Story, no Marshall, no American Jurisprudence. There had been no great questions before the court. There were a few distinguished politicians, whose biography, as such, has kept alive something of their names as lawyers, but, we have, in published volume, few pictures of the then American lawyer or of the American court. What glimpses we do get show that English methods and English jurisprudence had been transplanted to these shores, and were still here flourishing, so that, in making our comparison between what it is now and what it was then, we must contrast American law of 1900 with English law of 1800.

You have all heard of "Letters from Hell." It may not be improper for a prosaic lawyer to follow the suggestion of that author, and do again what has been done before, and, without

saying whether he comes from below or descends from above, let us imagine that able, arbitrary and insolent Chief Justice of England, Lord Kenyon, who had presided in 1800, called from his long home, and taking his seat on the bench of the superior court of this county, and allowed by courtesy to preside for a term in this year of grace, 1900. Let us put ourselves in his place; see things with his old-fashioned eyes; hear with his old-time ears. He will dislike the simplicity of our procedure; our democratic ways will shock him; he will miss the stuff gown and his horse-hair wig, and, if the measure of his astonishment is any indication of the progress we have made, we can congratulate ourselves, as he constantly stares at the things we take as a matter of course, but which are new, startlingly new, to him.

His first case is one where the sheriff has levied on a married woman's property to pay her husband's debts, and she rushes into court and protests. The old judge is astounded to see her there at all, and when he is cited to the new law which shows that her husband has now no right to her property; that she is actually allowed to make contracts; that she can sue and be sued, and even, in rare instances, be made to pay her own debts, he can hardly credit the evidences of his senses. And as if this was not startling enough, as the case progresses he is still more dumbfounded to learn that by the act of 1868 he is required to allow "the parties to testify each in his own behalf," and strange as it may seem, that perjury is now no more prevalent than it was before this extraordinary change of the law. He will try to get back on familiar ground and say: "Well, Mr. Sheriff, if this man's wife's property cannot be taken to pay his debts, and if he has none of his own to satisfy the execution, why is he allowed to be at large? Why is he not in jail? But if the sheriff is a young man, he hardly knows what the judge is referring to. He does not himself know that it is only since the Constitution of 1868 that imprisonment for debt has been abolished, and that as late as 1810 twelve hundred men were in jail in New York City for debts less than twenty-five dollars. So far from

appreciating the judge's question, he will explain to that bewildered official that on his own application the husband had just been declared a bankrupt, allowed to go free of the debt altogether, and is here asking a homestead of \$1,600. As Lord Kenyon was rather vigorous in his use of language we may imagine him exclaiming: "Surely the pendulum has swung from one extreme to the other—from harshness to liberality. If the century began as a hell to debtors, it surely closes as one for creditors."

In the course of the week he will almost certainly try a man accused of selling liquor. The old man has never heard of "prohibition" or "local option." In his day the demand was that people should be allowed to sell liquor without license. He finds now that it is frequently unlawful to sell it with one. In his day every farmer brewed and everybody drank. Abstinence, teetotalism, temperance, were unknown; and still more unthought of was the possibility that the law, by statute, would cooperate with the moralists to protect a man against his appetite.

But any admiration he may feel for this new departure in the law would be more than counterbalanced by his horror at the laxity of our divorce system. It is to be hoped that some member of the bar will move to postpone the call of the divorce docket, in order that the old man may not see how rapidly we can put asunder what God hath joined together.

Let us, if we can, picture the bewilderment and confusion into which this able, old-time jurist is thrown when he is called on to try a corporation case. He knew that most cities and a few banks, some colleges and ecclesiastical institutions had charters; but he is here to learn that capital and labor, religion and education, pleasure and profit, are all incorporated. Churches, schools, unions, trusts, lodges, societies, stores, sawmills, newspapers, banks, bar associations, glee clubs, ball clubs, golf clubs—things he never heard of—railroads, steamboats, telegraph companies, factories, gas companies, electric companies, besides

cities, counties and the State itself, all have charters. If, in so short a time, he can take it in, he will find that for seventy years the courts have been busy in the development of a branch of the law that was absolutely unknown to him; that a new field of jurisprudence has been created; that the rights of stockholders, creditors and of the public have been adjudicated upon lines so wise, principles so sound, and placed upon foundations so just, that it stands as one of the great monuments to the creative faculty of the human mind.

In the old days the right of property was far more sacred than the right of person. The English law was so proud of keeping the king out of the castle, that it forgot all about the man in the castle. It did, indeed, allow him to recover damages for small injuries and slight batteries, but if he was seriously hurt, if the man who injured him had purposely put out his eye, or intentionally maimed him, the law had no remedy. It was certain to convict the wrong-doer and punish him for his crime, but the only consolation it gave the injured party was the high-sounding phrase, "The private wrong is swallowed up in the public injury"; and if death ensued, following the felony, it said to the weeping wife and defenseless children: "Personal actions die with the person";—all claims for damage died with the death of husband and father. The chief justice, in his wildest dreams, had never conceived it possible to sue for a homicide; to get what he would have called "blood-money." The idea of recovering damages for the death of a human being would have been regarded as monstrous by laymen and lawyers alike. We take it as a matter of course, and yet there are men within the sound of my voice who can recall the first of that series of statutes which permit a recovery for personal injuries, even though they amount to a felony, and likewise give an action to wife or child for the homicide of husband and father. How fast we move! that this youngest of the children of jurisprudence should be full-grown, with a literature all its own, with reported

cases greater in volume than all the law books on all subjects published prior to 1800.

Towards the end of the term the grand jury comes in, and our presiding Lord Justice no doubt feels that, at last, he is upon familiar ground. Let us imagine an indictment for assault with intent to murder. He will be shocked at its brevity, and regard the indictment as crudely, unskillfully and untechnically drawn; but his eyes will open when he hears that the reform, which was just being talked about when he was in the flesh, has finally been adopted, and a prisoner is now allowed counsel, and that the prisoner's witnesses can be sworn. He will not only be amazed at being forced to allow this counsel to address the jury, but feel that he has been deprived of his prerogative of being "counsel for the prisoner" under which, with almost unvarying regularity, he had managed to secure a conviction. If our Meriwether county jury should, by some mischance, actually so far forget itself, in these soft and tender days, as to convict, our judge will feel deeply injured to learn that he is not allowed to sentence the prisoner to death; for, at the time when he lived, there were at least 250 capital offenses; he had often sentenced men to death for begging without a license, for horse-stealing, for sheep-stealing or for the more serious crime of poaching, or unlawfully killing a rabbit. In his days, the criminal laws were not only on the statute books, but they were rigorously enforced. He could tell us that, within his recollection, he had known John Wesley to preach, in one day, to twenty-four men in one jail, all under sentence of death. He could tell us, that, in his time, no judge ever rode circuit without putting on the black-cap and sentencing scores of men to be hung, their bodies to be cut down from the gallows, their limbs hewn asunder and their heads nailed over the city gate, there to bleach in the sun. Oh, the cruelty, the bloody cruelty of the old law—if law of the year 1800 can be called old. And here again we have swung from one extreme to the other. Instead of 250 capital offenses we have hardly a dozen; instead of convictions being the rule, convic-

tions for capital offenses are now the rare exception, and instead of executing men by the scores and hundreds, we have reached the point where in the year 1900 it is harder to convict for killing a man than it was in 1800 for killing a rabbit.

If anything could add to the judge's amazement, it would be the fact that if the defendant in a criminal case should be convicted he can now appeal to a higher court. He was familiar with the practice which granted the right of appeal to a man, who, by a verdict, had lost his land, but he had never heard of such a thing as allowing an appeal to a man condemned to lose his life!

It is said that when Lord Kenyon was at the bar, he was trying a common law case, and the presiding judge told him that in order to get the relief he sought he would have to go into equity, when he replied, with a greatly injured air: "Is thy servant a dog that he should do this thing?"

In his day, there were constant conflicts in jurisdiction, with the most intense jealousy between courts of law and courts of equity—the great body of the people, as well as the bar, siding with the law courts. All this is changed, and wherever there is a choice the litigant now prefers the equity side of the court. Lord Kenyon will find that, as judge of the Superior Court, he is vested with equity jurisdiction so broad, so comprehensive, so far-reaching, that it exceeds anything of which his old rival, the Lord High Chancellor had ever dreamed. Somebody will certainly ask him to appoint a receiver, and the old man will hardly know what they are talking about. If he sends for Blackstone, he will find that that word is not even indexed. He has heard some mention of an injunction, but that was a writ seldom used, and, if granted at all, in such rare and extraordinary cases as to take it altogether out of the domain of every-day practice. When he finds that he is asked, as a mere matter of course, to enjoin the cutting of timber, or expected to put a manufacturing plant in the hands of a receiver, or to operate a railroad, and issue receiver's certificates, he cannot be made to believe that

this oak has grown from the acorn of 1800. A jurisdiction so new, so extensive, so useful, is beyond his knowledge or skill, and when he is asked to do a little "government by injunction" and stop a strike, he will indeed think that he has been invested with powers which formerly had only been exercised by a general at the head of his troops; he will be willing to surrender his office; he will want to retire to the bosom of mother Earth, and to the peaceful mold from which he came, particularly when he learns that, instead of enjoying a salary of \$50,000, to which he was accustomed in 1800, he is now to receive for more and harder work the bewildering income of \$2,000 a year.

Except as to corporations and the enlargement of equity powers, all these changes are merely reforms. The absence of such laws was a reproach to the old jurisprudence; and while humanity is to be congratulated on the correction of such grave and cruel evils, still the law would come with nothing affirmative in its hands if it could only show a reform of abuses. We know of the vast volumes of legislation, but has the law taken any forward steps within this "Wonderful Century," while the drums have been beating a forward march in every other field of human endeavor? And here, too, the advance has been great; but so silent and unostentatious, so wanting in everything which impresses the senses or arrests the attention, that we are unconscious of how far afield we have gone. Let us ignore mere details and consider only a few of those fundamentals which, while preserving all of the old-time functions of the courts, have greatly enlarged their usefulness and powers.

The first and very greatest change of all is in the altered spirit with which courts are regarded. In the early days, nothing was more pronounced than the unpopularity of the judiciary. Adams "Midnight Judges" were but scapegoats for the general antagonism to all courts and all judges. In no State was this distrust more pronounced than in Georgia, where not until 1845—and then by a compromise—a Supreme Court was organized. That distrust has now not only disappeared, but larger responsibilities

are imposed and greater issues are submitted to them than ever before in the history of the world. As party spirit was largely responsible for the feeling against courts, so a loss of confidence in parties has brought about the reaction.

The American people are a bundle of contradictions. We want party government, yet without its disadvantages. We want partizanship, but we also want fairness; we demand party fealty, but want results which can flow only from calm and deliberate judgment. We elect a president as a partizan, and expect him to act as such; we elect senators and representatives as partizans, and expect them to vote as such; but, at the same time, we elect judges, in whom partizanship is a shame and partiality is a disgrace. From the executive and legislative we often expect partiality; from the judiciary always impartiality. What is a virtue in one is a crime in the other. It is to that tribunal where partizanship should be unknown that the people are now voluntarily referring the solution of the new problems and the difficult questions of this age.

This confidence in courts has enabled them to work out that other great and conspicuous achievement in American law—the elevation and exaltation of the individual. We often say that for fifty years the tendency has been towards centralization. If logic controlled the forces of social progress, that would necessarily mean the lessening of the importance of the individual. But on the contrary, and in spite of centralization and logic, this age has furnished the apotheosis of the individual. Never before was he as potent as now; never before were his liberty and property protected as now. In fact, every one of the reforms which we have already enumerated are direct results of the increased importance of the single citizen. Manhood suffrage, the abolition of imprisonment for debt, grant of property rights to woman, the right of each party to testify in his own case, the right to recover damages for personal injuries and for a homicide, mitigation of the cruelty of criminal laws, education of the child at public expense, limiting the hours of labor and the

age at which a minor can work, restricting the sale of liquor—are all rights and immunities first granted in the nineteenth century, and all granted for the unit. We talk a great deal of the rights of majorities, and of the rights of minorities, but in law there is no such classification. While we recognize the maxim, “the greatest good for the greatest number,” in a Republic, the greatest number is number one. A man is oftentimes in a majority; sometimes in the minority—but always a man, a citizen, a unit. We know that as long as the rights of the unit are safe, the rights of the mass cannot suffer. And it is for this reason that our legal literature furnishes such volumes of reported cases where the single citizen, in litigating his own case, secured decisions which affect every other unit. This is not so in England. Its courts have rarely decided, in litigation between private persons, cases which have become historical, like that of the *Postnati*, *Ship Money* and the *Case of the Monopolies*. But with us there are hundreds, if not thousands, of such where it has been one man against the State, or the public against one man. A whole tax system, as well as the nation’s system of finance, has been challenged by one man! The courts are perpetually deciding, at the instance of one man, principles which are as far-reaching as statutes. The *Legal Tender* cases, the *Income Tax* case, the *Dred Scott* case, the *Civil Rights* cases, the *Dartmouth College* case, were all brought by or against a single individual, and yet they involve principles which affected every man in the country. The decisions became part of the organic law of the land; they affected every contract; they have shaped legislation; they exceeded, in importance, any act of Congress, and have become practical amendments to the Constitution.

But in nothing is the individual’s pre-eminent importance so conspicuously manifested as in his right to dispute with government itself, and his power to say that no law is a law which violates his single, his private, his personal rights. Parliament is supreme; however tyrannical, its acts cannot be set aside; and England, that has adopted so many of our legal dis-

coveries, has not been willing to follow us into this untrodden field, where, at the instance of one man, the courts not only can, but must, pass upon the validity of a law, solemnly enacted and duly approved. This power was not given in express language in the early compacts, and was strenuously denied even after Chief Justice Marshall had decided the case of *Marbury v. Madison*, in 1803. The doctrine was not accepted in Georgia, and when an act of this State was first attacked as unconstitutional, no one judge seemed to be willing to pronounce so new and startling a decision. Four of them, therefore, agreed to meet in Augusta. With bated breath they formed a sort of hollow square; back to back, they faced a threatening public, and, with elaborate explanations as to their duty, almost with apologies, finally declared what we would call a "Stay Law," but what was then quaintly called an "Alleviating Law," to be unconstitutional. Instantly the legislature took alarm. Indignant that a pet measure had been declared void, a joint resolution was passed which clearly expressed the sentiment of the times, but which is now interesting only as being a distant and utterly forgotten landmark, showing how far we have progressed since the session at Milledgeville, in 1815, when the legislature solemnly enacted that:—

"Whereas, John McPherson Berrien, Robert Walker, Young Gresham and Stephen W. Harris, Judges of the Superior Court, did, on the 13th day of January, 1815, assemble themselves together in the city of Augusta, pretending to be in legal convention, and assuming to themselves the power to determine on the constitutionality of laws passed by the General Assembly, and did declare certain Acts of the Legislature to be unconstitutional and void; and

"Whereas, The extraordinary power of determining upon the constitutionality of Acts of the State legislature, if yielded by the General Assembly, whilst it is not given by the Constitution or laws of the State, would be an abandonment of

the dearest rights and liberties of the people, which we, their representatives, are bound to guard and protect inviolate.

"Be it therefore resolved, That the members of this General Assembly view, with deep concern and regret, the aforesaid conduct of the said judges . . . and they cannot refrain from an expression of their entire disapprobation of the power assumed by them of determining upon the constitutionality of laws regularly passed by the General Assembly, as prescribed by the Constitution of this State; we do, therefore, solemnly declare and protest against the aforesaid assumption of powers, as exercised by the said judges, and we do, with heartfelt sensibility, deprecate the serious and distressing consequences which followed such decision; yet we forbear to look with severity on the past, in consequence of judicial precedents, calculated in some measure to extenuate the conduct of the judges, and hope that for the future this explicit expression of public opinion will be obeyed."

If any one desires to study the changed temper of the times, and to see the new spirit in which the courts are viewed, let him read this resolution, and then compare it with the solemn declaration of the whole people of Georgia, as found in the Constitution of 1877. There is no room to charge usurpation, for it is there positively declared "that legislative acts in violation of this Constitution, or the Constitution of the United States, are void, and the judiciary shall so declare them."

It was once a common saying that if the people ever lost their liberty, it would be through the judiciary. That may be true, but the converse is equally true, if they preserve their liberties, it will be due to the judiciary. Neither corporations, capital nor capitalists precipitate revolutions. Only the people, the whole people, can accomplish that. Saving then revolution, the only way in which our present liberty can be lost is by subverting our present Constitution, and as long as courts exercise their present power, and check insidious as well as glaring encroachment upon its provisions, so long will constitutional government

by the people continue. But to allow courts to declare an act void is by far the greatest change in law made in an age of change. As shown by Britton Coxe, the doctrine may possibly have been foreshadowed by the civil law, and in a few decisions by inferior courts in this country, just prior to 1800; but if it was not actually discovered, it was really developed, within this century, and has grown even within the memory of the youngest here. When we recount the changes and progress of the past hundred years, nothing is more radical than this, nothing we could show would more amaze Coke, Holt, Mansfield, or even Erskine, those bright particular stars in jurisprudence, could we summon them to our meeting in this dawn of the twentieth century.

One of the great material inventions of the age is the steam hammer, whose stroke shakes the earth. Compared with it the fabled blows of Vulcan and the Titans are as the fall of the snowflake. And yet, when Nasemyth, the inventor, was called on to show its greatest and most wonderful power, he did not crush huge rocks, or with it weld formless tons of steel into a thing of use, but he placed an egg in a delicate wine glass upon the anvil;—and so nicely was the mechanism adjusted, and so perfect was his control over the machine, that the huge and ponderous hammer was arrested in its fall, so as just to touch, but not to break, the fragile shell.

So the greatest exhibitions of strength by the American people are not to be found in what they did on land and sea, in battle or in the achievements of material progress, but what they did not do, in what they allowed themselves to be prevented from doing, in obedience to laws of their own creation. This marvelous self-control is manifested in the changed spirit found in our State trials. When a great man was tried in the old days, conviction was matter of necessity. It had to be. It was unsafe to turn him loose, for he had both a memory and a sword. With us it has not been so, and most of our great State trials have resulted in acquittals.

There has recently been submitted to the members of a literary association in this country the query, "What is the most dramatic incident in American history?" For the time being, disregarding any narrow meaning of the word "dramatic," we might find in each department of life some incident which laid claim to pre-eminence. "Signing the Declaration of Independence," "Washington's Farewell to his Army," "First Message Over the Telegraph," "First Voyage of the Steamboat," "Completion of the Pacific Railroad," "Opening of the Philadelphia Centennial," each is fit for a master's brush. Each compresses history into a moment; all vividly impress the mind. But probably the lawyer would consider that there was no more dramatic legal incident than the trial of Andrew Johnson, President of the United States, exercising all the great functions of government at the very time he was being tried before the High Court of Impeachment. The picture of Grimes, raised from his couch in the Senate, may well take its place over against Sherwin's great historical painting of "Chatham Fainting in the House of Lords." There were fifty-four members of the Senate. If every member was present it required thirty-six, or two-thirds, to convict. If there was a single absentee thirty-five would convict, and the result would therefore necessarily be uncertain until the very last vote had been cast. As the roll-call progressed, and senator after senator from his place pronounced the defendant "Guilty," the excitement increased, and the result seemed inevitable. Only eighteen had voted for acquittal, and thirty-five against the president, when at the last moment a sick man, carried into the Senate Chamber by the help of his friends, rose from his couch and uttered a faint "Not guilty." The Executive of a great nation was retained in his high office by this feeble voice, and to the hushed and awed assembly the Chief Justice announced that "two-thirds not having pronounced 'Guilty,' the president is acquitted."

There is nothing in our annals more striking than this. The acquittal was purely formal. It was in direct obedience to mere

technical law. The moral result was against the president. A paralytic upon his couch; the "not guilty" of a weak minority, prevented his conviction, though the vast preponderance of wealth and population sought his downfall. And yet the Nation submitted; there was no riot, no revolution.

Other Nations, in the midst of revolution, had first imprisoned, then tried and beheaded their rulers,—England its Charles I., and France its Louis XVI.,—but it was left to this Republic to show to the world the unexampled spectacle of a people, in the midst of peace, trying a ruler while he was in the full exercise of the powers of his great office, and quietly accepting the verdict, though it was in opposition to the will of the majority. No more stupendous proof could be given of the supremacy of law! Till then, that a ruler could be tried and not executed was unthinkable.

A disputed title to a throne was an issue supposed to be too great for courts, and from the time when England was gory with the blood shed in the War of the Roses to determine who should be king, it had never entered into the heart of men to conceive that a court would be able to settle an issue so momentous; only battling armies were equal to that task. And yet, but as yesterday, in the midst of party strife most fierce, of sectional antagonism most bitter, with division so intense that it pointed inevitably to civil war, the Nation and the competitors alike submitted such an issue to the Electoral Commission. By an equally narrow and technical decision, by equal obedience to the mere forms of law, with one vote doing in this instance what one vote had done in the other, a decision was reached, peace was preserved, and a precedent established of more value to mankind than the success of a hundred presidents and all political parties.

The submission to a court of the question as to who should be president of this great Nation, the trial and acquittal of a president, are unparalleled. They are striking and unique illustrations of the supremacy of law among a people who themselves

make the law. There is only one step higher which can be taken, and that is to subject the State itself to the law. The State has always been regarded as above the law, "the State can do no wrong," "the State cannot be barred by the statute of limitations," "the State cannot be sued." These are maxims as old and as universal as jurisprudence, and yet they have all been reversed. Sovereign States have been sued, coerced by the judgments of courts in the same way, by the same process, and to the same extent as one of their own citizens.

Subversive as this is of all preconceived notions of the relation of the Law to the State, it is yet the very germ principle of our Government. The American charter was drafted by Jefferson in repudiation of the doctrine that "the king can do no wrong." The Declaration of Independence is, in effect, an indictment against the king with twenty-eight counts, and from the first of them, which charges him with having "improperly refused his assent to laws most wholesome," until the last which accuses him of "having incited domestic insurrection amongst us," there is the most distinct recognition of the fact that the State may not only do wrong, but that it is responsible therefor. The fathers planted wiser than they knew. This principle had in it more than they themselves dreamed. In it was involved the idea that even law must be obedient to law; that statutes solemnly enacted and duly approved may be against law, because against the Constitution, and even the lawmaking power, the very State, must likewise be subservient to the law. This unheard-of, this untried experiment, first provided for in the Constitution of the United States, and by which sovereign States, like New York or Georgia, are summoned into court, as any other litigant, and there made amenable to law, has been the potent but silent and unrecognized force which has so greatly increased the number of international arbitrations. They were rarely heard of before this century, and then always confined to matters of minor importance. But the success which has marked the American law, by which one State may sue another

before the supreme court, has no doubt been one reason for the increase in the number of international arbitrations. We recall the Geneva Award, the Behring Sea Award, the Venezuela Boundary Award, the Delagoa Bay Award, the Nicaraguan Award, but there are many others of great importance, even in our own history, all of which show the appreciation of judicial methods in settling even international disputes. A reference to the Hague conference sounds like a hollow mockery in the midst of the Boer war, the Philippine skirmish, the partition of China, and the unrest among the peoples of the earth. Still it was far from a failure. It was a great step forward, even to assemble to consider the possibility of preserving peace. It was the sowing of seed which will ultimately ripen into rich fruitage, even though it shall not altogether prevent the clash of arms. It is a distant harbinger of that far-off day when the second Golden Age shall return, and when the spear shall at last be beaten into a pruning-hook, and swords into plough-shares.

These changes all show that the people have placed the judiciary upon a pinnacle higher than was ever before dreamed; they have exalted courts and judges and lawyers and juries as ministers of justice; they have made justice the highest, the supremest duty of society. For the first time Hooker's definition of Law has found its complete fulfillment. The sovereign, the State, even "the greatest, is not exempted from her power." But this marvelous growth has not been altogether in sunshine. War and reconstruction were severe tests. Its supremacy even now is not unchallenged. Lynching, vigilance committees, white caps, riots, show that days of storm and stress still come. Universal experience, North, South, East and West, again and again reaffirm that all law derives its power from the consent of the governed. With the support of the people, law is supreme; without it, it is but tinkling cymbal and sounding brass.

If, indeed, it be true that there is now no glaring evil calling for correction, if the law-reformer has no tree at whose root to

lay his ax, well may he be assured that such will speedily spring from the rich and fruitful soil of our complex civilization. But, to-day, the reform must be wrought in legislative halls. In our own State the courts were recently criticized for the enforcement of certain technicalities in criminal law, so intertwined and interlaced with the fundamentals that only legislative power could bring about the change desired. This Association promptly prepared bills intended to cure the evils; they were presented to the Legislature, and by that body, in its wisdom, rejected. Its non-action indicates that the public is unwilling to allow indictments to be amended, or to put the prisoner and the public on an equality in striking the jury, and that it still favors technicalities which throw protection around men accused of crime.

At the first meeting of this Association efforts were made to secure the passage of a law, by which trials could be expedited, and the reproach of centuries as to the law's delays in part removed. Here again, the responsibility is with the legislature. But it is indeed a marvel that at the end of the 19th century we are complaining of months of delay, and are urging and insisting that whip and spur be applied to hasten the trial, within a given number of days, instead of within a given number of years. At the end of the last century, the problem was very different. There, the parliamentary committee reported that Lord Chancellor Eldon then had under consideration and undisposed of, many cases which had been argued more than ten years before. You recall the story of "Bleak House," and how the trenchant pen of Dickens succeeded in arousing public sentiment to a point which finally secured some improvement in the English courts. Steam and electricity have had their influence upon the mind. Everything moves faster, and it is with the legislature to say whether they shall go still faster.

The failure of justice in criminal cases has frequently been laid at the always convenient door of the law's delay, and, in

obedience to demand in some quarters, statutes have been recently passed for the calling of special terms. The criminal is only given a very limited time within which he can make a motion for a new trial. It is now a *fast writ of error*, or none at all; the Supreme Court must quickly hear, and with almost equal dispatch determine. So that, in Georgia, it is a fact that a man has committed a crime one day; a special term has been called the next day; within a week the grand jury have indicted, and the petit jury has convicted; in less than a month, the motion for a new trial had been made and overruled, and the Supreme Court had affirmed the conviction. Surely, surely, the constitutional guarantee of a "speedy trial," intended to correct the cruel abuse of tyrants, by which innocent men were held in prison for years without knowing why or whereof they were accused, has been perverted, and instead of being properly in the Bill of Rights, as one of the safeguards of liberty, unseemly haste would have turned a "speedy trial" into a mockery of justice but that convictions are so rare that no evil has yet appeared.

With all the discoveries and inventions applied to matter and machinery, there are no patented improvements on the human mind. No one has invented a new way of teaching, or discovered an easy way of learning; and as the trial of every case involves a study of facts, and a teaching of the law applicable thereto, until some labor-saving device is discovered by which facts may be chemically extracted from a witness and as rapidly assimilated and digested by judge and jury, the progress of a lawsuit must be as slow as it was before steam was applied or electricity harnessed; and even then, as long as judges are fallible, lawyers zealous and juries human, mistakes will be made and new trials will be granted.

Let us not confound law with lawyers, nor law with its administration. The law of a given case may be plain, and yet justice may fail. The law may be perfect, and yet lawyers and jurors and judges may fail in the discharge of their duties.

There was a time when the failures of justice could often and truly be laid at the door of the law itself. Long delays, technicalities, subtleties, fine-spun theories, hair-splitting distinctions, rules of pleading, rules of evidence, so cumbered the ground that the course of justice was impeded, if not utterly turned aside. In all confidence, we may claim that such is not now the case. Let us be frank and admit that the miscarriage of justice must now be laid at the door of man, rather than at that of the law. The judge, the lawyer, and the juror are now the responsible agents; and when the public wakes up to a realization of that fact, when it stops dealing with an impersonality, when it ceases to charge failures of justice against the intangible law, and begins to put them where they belong—upon judge, lawyer and jury—we may expect a quickening of the public conscience. I should not say jury. We so often speak of the “jury” that we forget the “juror,”—the individual, the single man, the responsible agent. We all of us know instances where the community has taken the law in its own hands and meted out to the murderer swift and awful vengeance, giving as excuse that it would have been impossible to convict. Why impossible? You have heard that argument advanced by men whose names were in the jury box; you have heard it from men who themselves have sat in the jury and found a verdict of “not guilty,”—generally condemned by the public as unrighteous. Judges and the Supreme Court may grant new trials, but not they—only the jury, the people’s representative, can acquit.

And just here appears the most lamentable failure of our law. With all of our progress, with all the improvements in its machinery, with the increased intelligence of the people, with the increased popularity of the courts, with the supremacy of the law generally recognized, we have yet woefully failed in its most vital function. There is comparative satisfaction with the administration of civil law; but we have never been able to deal with those charged with murder, manslaughter, and crimes involving personal violence. The old law inflicted swift, cruel,

certain punishment. Now, in many States, the death penalty has been abolished, as defeating its own ends. In most of the States it is practically disused, for even where it is preserved on the statute books, the jury is permitted to reduce the penalty from death to imprisonment.

But neither severity nor leniency secures an enforcement of laws enacted to prevent violence and to protect life. Read the sentence: "The protection of life, liberty and property is the paramount duty of government." How we have reversed the order! We protect property: when it is taken we restore, and punish for the taking. Consider how scrupulously we have tithed the mint, anise and cummin, and neglected the weightier matter of the law; how we have made the last first, and ignored the first altogether. Government does protect property; the rights of property are sacredly enforced. Liberty, too, is jealously guarded; a violation of the right of person is now almost unknown. We do not put men in prison or hide them in dungeons. And yet the first, the supreme, the paramount duty of protecting life is shamefully unfulfilled. When life has a property value, there is no difficulty in meting out punishment, in the shape of a verdict for damages for the homicide; but let the grand jury indict for the same transaction, and the chances are that there will be a verdict of "not guilty." This is one of the inexplicable mysteries of our age and people. It is not enough to say that sympathy is the controlling factor, because the criminal laws enacted for the protection of property are enforced with certainty. It is not difficult to convict a man of larceny, or burglary, or arson, or crimes against property, and to punish him accordingly. It cannot be unwillingness to inflict the death penalty, because the jury has a right in all cases to reduce the punishment from death to imprisonment. It cannot be any want or defect in the law itself, for the law of murder and kindred offenses is almost identical with what it is in other jurisdictions where convictions are sure, if guilt is shown.

It cannot be the cheap excuse so often heard, that improper acquittals are due solely to the ingenuity of counsel for the defense. That would be a reflection on the whole system, an insult to the juror and jury alike, to say that twelve intelligent men can be made to forget the evidence and their oath. It cannot be the law's delay, because the Georgia statute calls for lightning speed, and a criminal case must be determined in far greater haste than a civil suit.

As your representative at Saratoga, two years ago, I heard the superb address of Mr. Choate, our present Minister to England. No abler, no more brilliant defense of the system of "Trial by Jury" was ever delivered. But he powerfully emphasized that the constituents of a perfect jury trial were an impartial judge, learned in the law; attorneys ably presenting each his client's case, and above all, and beyond all, upright, intelligent and impartial jurors, anxious to decide according to the very right of the case, unmoved by sympathy and undaunted by public clamor. That is it, "upright and intelligent jurors."

In every office under our government there is need of intelligence of high order, and there is a supply fully equal to the demand. But it is a fact well worth emphasizing that nowhere does the law expressly demand intelligence, except of its officers of justice. In other departments, government treats itself with more or less independence; but in the administration of justice the State is responsible. Within limits, it guarantees results. It promises not only an impartial hearing but a right verdict, and, therefore, of each officer engaged in the trial of a case it insists upon character and intelligence. So far as the law is concerned, no man can be admitted to the bar, and no man can remain on its rolls, who is not only intelligent but upright. Only from its ranks can a judge be elected. And lastly, only upright and intelligent men can serve upon the jury.

Without juries the judge may protect liberty, and grant the writ of *habeas corpus*. Without juries he may often protect property. But the awful and supreme duty of protecting life by

meting out a punishment which shall deter others is committed solely to the jury. Lawyers and judges may influence the result, but they do not make the verdict. The murderer does not go free and absolved until the twelve impanelled to "find a true verdict according to the evidence" have pronounced him "Not guilty."

And here, as in everything else in our American system, the circle completes itself. We are where we began. No progress can take us beyond ourselves. After all is said and done, it is the people in the jury box that are responsible when criminals escape and unrighteous verdicts are pronounced, and let us not forget that it is also the people that are entitled to the only praise when law is supreme and life protected.

APPENDIX B.

REPORT OF TREASURER.

Z. D. HARRISON, *Treasurer,*

In Account with Georgia Bar Association.

	DR.	CR.
To cash balance from last report	\$ 115 36	
Dues collected since last report	1,365 00	
By Voucher No. 1—Chas. L. Davis		4 00
2—Chas. L. Davis		24 30
3—Postage		2 00
4—Morning News		2 50
5—Enquirer-Sun		2 85
6—Constitution Pub. Co.		5 60
7—Macon Telegraph		1 75
8—Chas. L. Davis		52 50
9—Protest fee		75
10—Franklin Prtg. & Pub. Co.		13 55
11—Wm. Gerdine		35 00
12—S. H. Hardwick		75 00
13—Chamberlin-Johnson-DuBose Co.		16 50
14—Franklin Prtg. & Pub. Co.		468 73
15—J. W. Burke Co.		25 90
16—O. A. Park, Secretary		200 00
17—Postage		2 00
18—Postage		2 00
19—Revenue stamps		2 50
20—Z. D. Harrison, Treasurer		100 00
21—Franklin Prtg. & Pub. Co.		5 75
	\$1,480 36—	1,053 18
July 3, 1900, balance		427 18
		\$ 1,480 36

Audited and approved July 3, 1900.

BURTON SMITH,
Chairman Executive Committee.

APPENDIX C.

REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

To the Georgia Bar Association :

The Committee on Jurisprudence and Law Reform submits the following Report :

At the session of the Association in 1899 was presented a Memorial from the Medical Association of Georgia accompanied by a paper which had been read before the last named Association by Dr. James B. Baird of Atlanta. The memorial and the paper were presented by Dr. Baird in person. After some discussion as to what action this Association should take, the subject was finally referred to a special committee, of which Hon. Geo. Hillyer was chairman, with instruction that the committee should act on its own responsibility without authority to commit this Association ; and the Committee on Jurisprudence and Law Reform was instructed to make a full report to the Association at this session of 1900.

The object of the Memorial was to obtain the indorsement of the Bar Association to proposed legislation, (1) providing for the compensation of expert witnesses in civil and criminal cases, and (2) making communications of physicians with their patients privileged, and inadmissible in evidence in civil cases. The views of the Medical Association were afterwards embodied in two bills introduced into the General Assembly in 1899, which received the support of the special committee of the Bar Association, were favorably reported by the Judiciary Committee of the House, and met the usual fate of not being reached before adjournment. These bills are attached

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to this report, and are considered by your committee as embodying the legislation desired by the Medical Association.

I. COMPENSATION OF EXPERT WITNESSES.

1. The bill for the compensation of expert witnesses applies only to scientific experts. There is no good reason for this. The blacksmith who by years of experience has become an expert in horse-shoeing; the farmer who has become expert on questions as to the best time for planting particular crops in particular localities, or as to the amount of labor which should be done by a given number of men in a given time; the stockman who knows the fine points of a horse; the expert cotton classer; all these, who have acquired their knowledge as part of their stock in trade, are as equitably entitled to compensation for their opinions as are the surgeon, the chemist, the engineer, or the electrician. When we begin to legislate on this subject, we should not unjustly discriminate; and unless we do, we are apt to clog the wheels of justice.

2. Every witness is now entitled to his *per diem* of seventy-five cents, and this amount is paid alike to him whose time is worth a few cents a day and to him whose time is worth many dollars a day. Every citizen must expect to bear willingly his part of the burden of public service, and this duty is nowhere higher than in promoting the ascertainment of truth in judicial proceedings. If there is to be discrimination in the pay of witnesses, should it not rather be based on the value of their time than the nature of the testimony? Why should the expert who is possessed of scientific knowledge be entitled to withhold it for pecuniary gain, when the ordinary citizen who has become possessed of material facts is compelled to divulge them on demand?

3. The learned professions have no claim to be exempt from this public burden. Referring only to what is most familiar to us, members of the bar are required "never to reject, for

a consideration personal to themselves, the cause of the defenceless or oppressed" (Code, sec. 4427, par. 6); to defend without compensation paupers charged with crime who may be assigned to us by the court; and perform a like service in unrepresented divorce cases, etc., etc. Lawyers have many special privileges to offset these burdens; but the special privileges and exemptions of physicians are greater.

4. New legislation on these lines is to be avoided except when there is an evil to be remedied. This cause seems to be here lacking. Your committee is not informed that physicians are so frequently called upon as involuntary experts that they are entitled to relief by special legislation.

5. The Bar Association should not cheapen its action and its influence by giving its indorsement to any measure which does not (1) concern the bar itself or the practice of its profession, or (2) tend to benefit the general public and promote the general welfare. This legislation cannot be assigned to either head. It concerns only the pecuniary advantage of a class.

II. AS TO PRIVILEGED COMMUNICATIONS.

The second bill makes inadmissible during the life of the patient, and no longer, the testimony of a physician as to any information acquired by communication with or examination of him, *or otherwise*, while attending him professionally, if the information be necessary to proper treatment; and it applies to all civil cases except suits for personal injury or malpractice.

1. Much criticism could be made on particular features of the bill. Why confine it to certain cases? If the patient be entitled to a concealment of the truth in these cases, is he not equally entitled to it in all? Is the right to the judicial ascertainment of the truth possessed by the State, and by the litigant in personal injury and malpractice cases, so much higher than the same right of the private litigant in

other cases? Why confine it to the life of the patient? If he be entitled to preserve his reputation and his property by concealment of the truth, should not his surviving family be permitted to similarly keep his memory untarnished and his estate undiminished? But as our objection goes to the merits special demurrer is unnecessary.

2. We repeat our observations in considering the Expert Witness bill, that the alleged evil sought to be remedied by this bill does not seem to be so extensive as to call for special legislation.

3. This Association should not, in our opinion, recommend the incorporation into our law of any further obstacles to the judicial ascertainment of the truth. As we Southerners are so thoroughly imbued with the doctrine of States' rights and other permanent and unchanging political principles imbibed with our mother's milk that many of us have never stopped to give them a moment's thoughtful consideration and dissection, so are we Anglo-Saxons similarly unanalytical in our consideration of many of the principles and provisions of our common and statute law. Thus accustomed are we to the doctrine that no man shall be compelled to testify in his own criminal case, or to answer any question which may tend to criminate or disgrace him or his family; that confessions are inadmissible where induced by the slightest hope or fear; to the restrictions on proof of admissions made by agents and representatives; and to the mass of the rules of evidence intended to limit the means for the ascertainment of truth within narrow bounds. This committee is not prepared to assail any of these rules or principles, but it is prepared to oppose the erection of further barriers until the necessity for them be clearly shown—so clearly that he who runs may read. No man is really wronged (though he may be deprived of what he should not retain) by the ascertainment of the truth at the instance of the commonwealth or of his neighbor who has a dispute with

him, so long as that truth is material to the issues, or assists in determining the credibility of testimony.

4. Lawyers' communications with their clients are made privileged because lawyers are a part of the machinery for the redress of wrongs. The lawyer, within the scope of his employment, is the *alter ego* of his client, and if he be forced to disclose his client's affairs, the client should likewise be compellable to do the same. But your committee deems it unnecessary to defend this provision of the law, because, if its existence be a reason for further blocking the ascertainment of the truth, it should not be allowed to stand. It would be better to repeal it than to extend it.

Your committee recommends that this Association respond to the Memorial of the Medical Association of Georgia by expressing its regret that, for the reasons stated herein, it is unable to give the indorsements requested.

Respectfully submitted,

A. R. LAWTON,
L. F. GARRARD,
ALEX C. KING,
ALLEN FORT,
R. T. FOUCHE,
Committee.

A BILL

TO BE ENTITLED AN ACT TO PROVIDE COMPENSATION FOR EXPERT WITNESSES,
AND FOR OTHER PURPOSES.

Section I. Be it enacted by the General Assembly of Georgia, and it is hereby enacted by the authority of the same, That any witness subpoenaed by the State to testify only to an opinion founded on special study or experience in any branch of science, or to make any scientific or professional examination, and to state the results thereof, shall, in lieu of the fees now allowed witnesses for the State, be entitled to such just and reasonable, but in no case excessive, compensation as the judge trying the case may award upon a consideration of the value of the time employed and the degree of the learning and skill required, to be paid as prescribed by section 1116 of the Penal Code.

Sec. II. Be it further enacted by the authority aforesaid, That wit-

nesses subpoenaed by the defendant in criminal cases as experts shall be entitled to similar compensation, which shall be collectable upon the conditions and in the manner provided by law for fees of non-resident witnesses for the defendant.

Sec. III. Be it further enacted by the authority aforesaid, That in civil cases, when not otherwise agreed upon by the party at whose instance the subpoena issues or the evidence is had, expert witnesses shall be entitled to similar compensation, to be collectable as the law now provides for collecting witness fees in civil cases.

Sec. IV. Be it further enacted by the authority aforesaid, That all laws in conflict herewith be, and the same are, hereby repealed.

Amend section III. by adding to the end thereof the following: "Except the same shall not be charged to the opposite party if he be cast in the suit."

A BILL

TO BE ENTITLED AN ACT TO RENDER PHYSICIANS AND SURGEONS INCOMPETENT
TO TESTIFY IN CIVIL CASES AS TO CERTAIN INFORMATION ACQUIRED
WHILE CONSULTING OR ATTENDING A PATIENT, AND
FOR OTHER PURPOSES.

Section I. Be it enacted by the General Assembly of Georgia, and it is hereby enacted by the authority of same, That no person duly authorized to practice medicine or surgery in this State shall be competent to testify in civil cases, except cases founded on torts for personal injuries or for malpractice, as to any information acquired while consulting or attending a patient in a professional capacity and learned by communication with or examination of the patient, or otherwise, and which was necessary to enable such physician or surgeon to properly prescribe or treat the patient, during the life of such patient, unless he or she expressly consents to the same.

Sec. II. Be it further enacted by the authority aforesaid, That all laws in conflict herewith be, and the same are, hereby repealed.

APPENDIX D.

REPORT OF THE SPECIAL COMMITTEE ON EXPERT WITNESSES.

ATLANTA, GA., July 3, 1900.

Mr. President:

The Committee on Reform as to the law and expense of expert witnesses have no formal report to make, for the reason that at the session of this body one year ago, the entire subject was referred to the Committee on Remedial Procedure and Judicial Reform. The last named committee was to investigate the whole subject and report at this meeting. By way of information, however, I beg leave to say that, aided by a very slim attendance of my committee, I appeared with Dr. Baird, representing the State Medical Association, before the Joint Judiciary Committee of the last Legislature, and recommended that some reform, properly guarded and digested, be made in the present law on this subject, taking the bills framed by Dr. Baird as a basis. It would seem that the medical profession ought in some way to be protected from the too great burden of attending in unnecessary numbers at criminal trials; and that moderate and reasonable compensation should be secured to a limited number of such witnesses, in all cases where the same may be practicable. I am informed that the session ended without any legislative action being finally had.

I communicated a request sent to me by Colonel Lawton, chairman of the committee charged with the consideration of the subject at the present session, for more detailed information, to Dr. Baird, and he informs me that he sent to Colonel Lawton all that was at his command.

Respectfully submitted,

Geo. HILLYER,
Chairman.

APPENDIX E.

REPORT OF COMMITTEE ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

To the Georgia Bar Association :

The embarrassment inevitable to the execution of a commission so extensive in its scope and allowing so wide a range for the selection of topics, as that under which this committee was charged to act, has been not a little enhanced by the circumstance that, so far as its chairman has been informed, no specific matter for examination and report was referred to it by the Association at its last meeting, nor has any member, or any lawyer, within or without the State, favored it with a single valuable suggestion for raising the standard of judicial administration, or for the improvement of our system of "Remedial Procedure." Confronted with a great variety of useful and attractive topics, without official instruction or private suggestion to direct our choice, our perplexity has been akin to that experienced by the eager and expectant guest, who, in the midst of a profusion of unaccustomed dainties, sits "inattentive and untasting," while selection hesitates and appetite is shorn of zest by sheer bewilderment.

It should be further explained, that the committee was seriously hindered in its labors by the impossibility of frequent correspondence and active cooperation among its members,—due chiefly to exacting professional engagements and partly to private bereavement. So much by way of apology for the incompleteness of its work.

This report (if such it can be called) has little relevancy to law in the abstract, or to the general municipal law of the State; but concerns chiefly the manner in which, and the means by which, the laws of Georgia are administered in her courts, and

by her commissioned judges. The judicial administration of the law, being but another name for dispensing justice to the people, can be neither efficient nor beneficial unless the forms and machinery provided for such administration be uniform, intelligible, and adequate; and, as in mechanics, there must be no avoidable "loss of force."

The Rules of Procedure should be convenient, and compulsory—sufficiently so, at least, to insure safe and easy access to suitors; a full, orderly, and candid expression of their complaints and desires; for compelling the production of all relevant and material testimony, by those who possess it; and to secure prompt and practical submission to the result when ascertained and declared. And so, whatever the State shall prescribe,—directly or through its judges—for promoting these ends, constitutes its system of "Legal Procedure"; which includes the whole body of rules and formulæ applicable to pleading, evidence, and practice. The judges who administer them must of course be accurately informed as to their spirit, reason, and purpose, and resolute and diligent in their enforcement.

With these conditions present, there is small need for the addition of anything more in order to secure to the citizen such measure of "legal justice" as is attainable in human affairs. The improvement made in the Rules of Procedure observed in our courts has, during the past decade, been extensive and beneficial. To those embodied in the Code only a few have been added by legal enactment; and these last were designed mainly to adapt those already established to changing business conditions and to current popular needs. Some of these new rules can hardly be said to have advanced beyond the experimental stage; and, though reluctantly accepted and severely criticized by some, having both authority and experience, yet have thus far proved valuable for promoting perspicuity and conciseness in pleading, and for the speedy disposition of causes.

The act of December 15th, 1893, known as the "pleading act," as construed and applied by the courts, has proved a sat-

isfactory device for procuring from litigants full and early disclosure of the matters really in dispute, for settling the issues to be tried, and for a speedy and impartial determination of all questions of law and fact. Further material improvement in this direction has resulted from the several "practice acts" of December, 1895,—prescribing how service may be made, in certain cases, on non-resident defendants; the manner of making parties; and "regulating practice in the Superior Courts." The committee have united on no plan looking to further improvement in the rules of civil procedure. It is proper, however, to state that a requirement that defendants shall recite, in their answers to petitions, the substance, at least, of each paragraph that is to be denied, following such recital with a denial, total or partial, as the facts relied on may authorize, would promote convenience and despatch in the trial of causes. Indeed, a requirement of this character would seem to be fairly authorized by the second section of the Act of 1893; and its recent adoption by the very learned and distinguished judge of the United States Court for the Southern District of Georgia is strong proof of its utility. It has also been approved and adopted by courts of other States, and is here submitted for your information.

In this connection, and subject to the same limitation, it is suggested that legislation may be necessary for the correction or repeal of *sections 2145 and 2146* of the Code of '95,—fixing the venue of actions against insurance companies, and prescribing the manner of service when without an agency or place of business in the county in which the cause of action arose.

In the case of the *Empire State Insurance Co. et al. v. Collins*, reported in 54th Georgia, page 376, the constitutionality of the two sections was challenged (interrogatively) in so far as they undertake to authorize suit and service "wherever there may have been an agency (of the company to be sued) at the time the contract was made." At the succeeding term, and in the case of *Merritt v. The Cotton States Life Insurance Co.*, and in direct answer to the query accompanying the former

ruling, the constitutionality of the several acts codified in sections 2145 and 2146 was distinctly affirmed. It has since been held, however (see 99th Ga., page 225), that an insurance company cannot be sued in a county where it had no agent or place of business at the time the action was brought; and that service under these sections "is not sufficient to give jurisdiction."

The retention in our Code of a statute long since condemned as unconstitutional is both a superfluity and a disfigurement.

The policy of blending law and equity jurisdiction, formally authorized by the Constitution of 1877, and supplied with appropriate procedure by the Act of 1887, has, by judicial construction and occasional legislative addition, been made to appear less of "an anomaly," and more distinctly a cheap, convenient, and speedy method for affording in one and the same tribunal relief against wrongs of every sort, suffered or apprehended; and if a suitor's petition be broad enough, the courts do not hesitate to award both equitable and legal relief, or either, in the same action—"the difference being one of substance and not of form."

As to the wisdom of this policy, there still remains some diversity of opinion among the most eminent judges and experienced pleaders of our own and of other States; nor has there been anywhere an entire fusion of the two jurisdictions; in only four of the States are different courts maintained, with judges, for the separate administration of law and equity; and with us, the principles on which courts of law administer "equitable relief" are the same, and the pleadings must still conform substantially to those in use when Hardwicke and Eldon made English Chancery-Jurisdiction the pattern and guide for judges and pleaders in all lands, where equitable principles and procedure are studied or applied. It must be confessed, however, that much still remains to be done in order to give scientific precision to the rules for determining when the one species of relief or the other is to be allowed in a law court. Under the liberty (or rather the license) of amending, it may well puzzle

the most attentive judge to diagnose correctly at particular stages of a trial the precise present character of the case before him after it has been amended, to meet each demurrer,—general and special—shifting ground to parry each fresh attack; and so changed at last, that even the pleader who prepared it would be puzzled to identify the altered features of his own offspring, or to determine to what specific relief, after so many transformations, his client is entitled.

Whether it would be wiser to continue the effort to harmonize and adjust the two jurisdictions, so as to render their administration by a single court safe and convenient, or to return to the old system, is a matter of grave discussion—especially among the older members of the profession, to not a few of whom the present arrangement still seems incongruous and confusing, seriously hindering the selection and use of precedents, and not promotive of that accuracy of statement and of prayer essential to procuring specific relief appropriate to each particular case.

Any expression of opinion by the committee, as to the merits of this question, would hardly be proper or profitable. In behalf, however, of one or two of its members, it may be stated that a return to the old system—to the extent, at least, of requiring separate dockets to be kept of causes requiring equitable remedies, and of assigning particular days for their consideration—would lessen the inconveniences complained of. The spirit of conservatism in everything that concerns legal administration and procedure is still strong among the lawyers of Georgia. They are slow in approving “new schemes”—preferring rather to “stand on the old paths,” affirming upon great authority, that “whatever is settled by custom, though it be not wholly good, yet at least it is fit, whereas new things piece not so well; and though they help by their utility, yet they do trouble by their inconformity.”

It will hardly be expected of the committee, in the absence of larger experience of its workings, to attempt any forecast of the

effect on judicial administration of the new method, or rather the return to a long discarded method for selecting our superior court judges.

At least thirty-three States of the Union choose their judges by popular election ; and, with a few notable exceptions, there has been a surprisingly small amount of serious malversation and scandal under that mode of appointment.

It should be remembered, however, that the conditions attending its adoption and use in the States referred to were, and are, widely different from those under which it is to be tested by the people of Georgia. In all of them longer tenures, more liberal compensation, with "rotation" in service, have doubtless operated to mitigate the evils and inconveniences believed to be inherent in the system.

In the States of Pennsylvania and Michigan, the renown of whose judges has penetrated to all lands where English law is known or judicial excellence admired, not the slightest taint of scandal or suspicion of corrupt practices has at any time attached to the administration of law in the courts of highest jurisdiction. In the great State of New York there has been in recent years but one notable lapse from judicial purity by a judge of any of the higher courts, and that aroused such a storm of indignation—not only against the offender and his fault, but against the political party under whose auspices he secured his first appointment—that when this same party, presuming on its proven ascendancy at the ballot-box, presented him again as its candidate for further judicial promotion, the people of New York, irrespective of party ties, united in expressing their abhorrence of judicial corruption by recording a majority of more than forty thousand votes against his candidacy. Notwithstanding this prompt and terrible rebuke, an English writer of great reputation, and accurately informed on all points touching the social and governmental institutions of our country, has emphasized his condemnation of this method of judicial appointment, by the statement that, after an interval of twenty-five years, "it

had put a Barnard in the seat that had been graced by Kent, and defiled the ermine of Denio by placing it on the unworthy shoulders of Cardozo."

Opinions unfavorable to its further retention in our own State have already found frequent and strong expression in the public press; while the minds of many (both lawyers and laymen) who have hitherto remained silent are known to be filled with sinister forebodings as to its probable effect on judicial character and conduct. The first, however, may be due to reports of unseemly practices during the canvass that preceded the recent congress for nominating candidates; while the last is attributable to unfavorable prepossessions, induced by more or less familiarity with its workings in other communities. Among the small number of those now living who have had actual experience in this method of judicial appointment, the weight of opinion is believed to be unfavorable to its retention.

It is somewhat remarkable that Georgia, although the first of the thirteen original States to entrust this delicate and responsible function to the people, was also the first to withdraw it—this, after a brief experience of its operation—and, with the exception of two short-lived attempts to restore it, was the last to return to the system, three times tested, and as often rejected.

These changes, which were of short duration, seem to have been due to political competitions and party policy, rather than any settled preference for the elective method, or to any fixed opinion of its merits derived from experience of its workings. Just what moved the people of Georgia to return to this twice-discarded system cannot be confidently or definitely stated. To some it seems to have been the outcome of mere capriciousness and a restless desire for change; while others see in it only the operation of that law which makes repetition and retrial the indispensable condition of all human progress, and compels States, as well as individuals, to retrace the steps already taken, to pull down what had, at heavy cost, been built up, and to "go over their work again and again with painful iteration."

There are still others who insist that serious abuses, real or supposed, had crept into the former method of judicial appointment, rendering it, in the eyes of the people, disserviceable, and demanding its abandonment; that judicial station had become, or was in danger of becoming, the customary reward of subserviency to selfish and unscrupulous bosses, or of dexterous bargaining, or uncleanly intrigue, rather than the fair and proper guerdon of profound learning, long experience, and tried integrity. Whatever may have been the efficient cause, the people have condemned the former method, and at the ballot-box decreed its destruction.

What, then, should be the attitude and conduct of the bar, while this experiment is proceeding? Lawyers are, or ought to be, conservative in everything that concerns the law and its administration, and jealous of sudden and radical changes in the method of judicial appointment and in procedure.

They believe, too, that whatever suspicion of abuse or inconvenience may have induced its adoption, yet the radical remedy selected is uncertain in its results and full of danger; and yet on the bar rests the plain duty of attending its operation, of mitigating such evils as cannot be averted, and of assisting in a return to better and safer methods when failure is inevitable and disaster apparent.

We know that in whatever concerns the administration of law and the public safety, we are "trustees for all the people—physicians for the State's distempers." The greatest of modern publicists has, after a philosophic study of our institutions of government, state and national, assigned to the American bar the chief place among the secondary forces of American public life, and attributes the small percentage of judicial corruption developed under the elective system to the influence of the lawyers in preventing unworthy nomination, declaring that "the lawyers have proved the most potent factors in mitigating the evils of a vicious system." Surely this intervention is indispensable now, when, by adding popular appointment to absurdly

short tenures and shamefully inadequate salaries, we have assembled every sinister condition, every circumstance unfavorable to judicial excellence and purity.

Let us, then, meet the people half way in the business of conducting the scheme to a prosperous issue; and should experience demonstrate its insufficiency, then let us encourage and assist them in retracing their steps, in repairing the mischief already done, and in a quick return to wiser and safer methods. If we do this with alacrity and good faith, the purity of our judges and the efficiency of our courts will be in small danger of serious eclipse or permanent impairment; and the day will never come in Georgia when effective service at polling-place and primary will be the familiar avenue to judicial favor; when a non-suit, or a *nolle prosequi* will purchase a precinct, or a receivership stand on the price-list as the fixed equivalent of the good offices of boss and wire-puller.

CRIMINAL PROCEDURE.

A somewhat extensive observation of the working of our system of criminal procedure has disclosed no defect requiring legislative removal or causing inconvenience beyond what can be easily made amenable to judicial correction. Detection, arrest, and trial are, or may be, as certain, convenient and speedy under it as under the more detailed and complicated systems of other States; and with its intelligent and resolute enforcement violent assaults on the persons of citizens and invasions of property will soon cease, by their frequency and atrocity, to disturb the public peace and to fill even hopeful men with misgivings as to the efficacy of any penal system, however complete or terrible in its sanctions, for preventing the most atrocious crimes. For restraining the brutal and redeeming the depraved, our present criminal code of procedure is perhaps as effective and convenient as our social and material conditions justify or require.

Shocked at the appalling frequency and swiftness with which,

through tumultuous and lawless assemblies, unauthorized vengeance is inflicted on even the suspected perpetrators of certain crimes, men, ordinarily lovers of law and order, and bound by every obligation of duty and interest to be resolute in resisting and rebuking all riotous usurpations of the functions of the courts, have of late seemed to give partial approval to certain projects for the improvement of our criminal procedure—notably in the matter of continuances, the selection of jurors, and the amending of indictments when necessary to adapt the accusation to the proof. To such of the committee as have examined the proposed changes, they seem undesirable and inexpedient, though doubtless sincerely approved by many to whom they have been suggested.

As matters now stand, improvised terms and speedy trials, called and conducted sometimes under circumstances of extreme public exasperation, should be sufficient to satisfy the demands and silence the clamors of such as explain, or even seek to justify, on grounds of delay in trial and the delinquency of lawyers, the too common resort to masks and midnight assassination as a substitute for judicial trial under lawful procedure; and it is probable that the lynching industry has suffered some decline from the application of this remedy—not, in the estimation of all, entirely safe or quite scientific. It therefore becomes a matter of serious inquiry, why, and at whose suggestion, these so-called reforms in our criminal procedure continue to be urged, accompanied at times with a significant intimation that unless accepted and carried out, conspiracies against human life and social order will be further resorted to. Whatever motive may prompt others, the authors and ministers of this nefarious jurisdiction are, at least, known to be openly and seriously concerned for the adoption of several radical changes in our system of criminal procedure.

Admonished both by conscience and authority of the increasing disesteem into which they have fallen and the enormous wickedness of their own procedure, or else shrinking under an

intolerable burden of conscious guilt, they shrewdly seek to shift the responsibility for their atrocities to the courts and the lawyers, and to find in their alleged defects and delinquencies a sort of justification for the methods on which they proceed. Hitherto neither the courts nor the lawyers have shown any uncommon alacrity in thus helping to patch up an apology for their guilt, nor confessed, for their accommodation, to the existence of defects in the law or unfaithfulness in its administration. And the courts and the lawyers are right! Having no partnership in their turpitude, they should accept no share in their responsibility, nor receive any dividend out of the joint investment of conspiracy and murder. It is vastly important, too, that these malefactors be plainly advised, that under no circumstances will the courts or their ministers give color to their calumnies or furnish sanctuary for their guilt by a feigned confession of remissness and unfaithfulness: "Complaisance toward criminals is as detestable as companionship in crime."

With violators of the law, with the usurpers of its procedure, and the defamers of its officers there must be neither truce nor treaty. They must be pursued and apprehended and prosecuted and driven out of that society whose laws they have outraged and whose peace they have wickedly destroyed. Least of all should judicial discretion be further limited, or the citizen's customary resources of defense against grave charges be reduced, or the rules that secure accuracy in official accusations be relaxed. It would seem wiser and more humane that the first be enlarged and the others made permanent, and that all prosecutors be straightway made to understand the duty of extreme circumspection in statement and in proof when preferring grave accusations against their neighbors; and solemnly warned of the condemnation that inevitably awaits the careless accuser of others.

The need of limiting or defining more carefully the penalties authorized by section 1039 of the Penal Code has been strongly urged by some whose opinions are entitled to very careful con-

sideration. The grotesque inequality in the penalties awarded in our courts of inferior jurisdiction against persons convicted of like misdemeanors and standing in the same predicament of guilt is anything but creditable to the system that permits it; nor can any high or humane result be looked for from the operation of a law whose administration is so liable to become the opportunity for oppression, resentment or caprice.

W. M. HAMMOND, Chairman.

APPENDIX F.

REPORT OF THE COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

Your Committee on Legal Education and Admission to the Bar have but one recommendation, as follows:

That the exceptions allowing graduates of law schools to be licensed without standing the examinations be repealed.

With this amendment, your committee believe the law regulating admission to the bar in Georgia is good enough.

Respectfully submitted.

WM. P. HILL, Chairman.

APPENDIX G.

REPORT OF COMMITTEE ON LEGAL ETHICS.

Legal ethics comprehends the rule of action governing the lawyer in his relations to his client, to the court, to his brother lawyer, and to the public.

It is placed on a higher plane than the ordinary courtesies of life, and involves the elements of true manhood and capacity for leadership in all matters of public as well as private interests in the community where the lawyer lives.

With his client he must be honest and candid, giving such advice and service as will promote his best interest, seeking rather to avoid than encourage litigation. Competent fees should always be a condition precedent to employment, except in cases of charity and patriotic service, but financial gain should not be the controlling influence in the advice given or service rendered. The honest enforcement of the law and the protection of his client's legal rights should be the guiding influence in the lawyer's work, and for this he is entitled to demand and receive adequate compensation. The solicitation of business, and underbidding on fees to obtain it are properly considered disreputable in the lawyer. No good lawyer needs to do this to obtain business, and it is always evidence of inferior ability or low professional standing in the lawyer who does it. The legal profession is something more than a mere trade, it is a high and honorable profession involving brain and character as essential elements to support it, and which cannot be prostituted to trade methods. It remains for those who are either incapable in point of learning or unworthy in point of character to adopt such methods to obtain business.

To the court the lawyer should be courteous and honest, never attempting to mislead for the sake of the success of his cause, and submitting with due respect to the rulings of the court when adverse to his contention. It is never profitable or proper to take offense at the rulings of the court when rendered in the proper discharge of official duty, nor is it proper for the court to exercise official authority in such manner as to give offense to the bar. There is a reciprocal courtesy demanded of each which, if properly observed, will advance the ends of justice and command the respect of all.

The public has an interest in demanding of every lawyer a high standard of character and capacity, for there is no other profession which gives a man greater influence for good or evil than the profession of law. He is necessarily identified with every public as well as private interest and enterprise of his community, and has more to do with shaping the sentiment and character of his people than any other one man if he but use the power thus given him with ability and tact.

Like many other good institutions, the profession of law is imposed on by some who, by the liberality of its rules are admitted into its sacred precincts, or who do not regard the ethics of the profession. We regret to say that there is evidence of needed reform on this line in the ranks of the profession, and as a result the profession as a whole suffers in the estimate placed upon it by the public.

There should be more rigid enforcement of the rules as to ability and character in admission to the bar, and a strict enforcement of law against those who after admission violate the honor or ethics of the profession.

Respectfully submitted,

A. F. DALEY,

Chairman.

APPENDIX H.

REPORT OF DELEGATES TO AMERICAN BAR ASSOCIATION.

Mr. President :

The delegates appointed by this body to the American Bar Association have the honor to report:

That on August 28, 29 and 30, 1899, the twenty-second annual meeting of the American Bar Association was held at Buffalo, N. Y., Mr. Charles F. Manderson, V.-P., for Nebraska, presiding, in the absence of Mr. Joseph H. Choate.

The International Law Association held its nineteenth conference in conjunction with the meeting of the American Association.

The Erie county bar was very gracious in extending courtesies to the members of the Association, and the visit of your delegates was made most agreeable by our professional brethren.

Papers were read before the Association as follows:

"New Jersey and the Great Corporations," by Mr. Edward Q. Keasbey.

"State Punishment of Crime," by Sir William R. Kennedy, a Judge of the High Court of Justice of England.

The annual address before the Association on the subject of "The Power of the Government of the United States to Acquire and Hold Territories," was delivered by Hon. William Lindsay, senator from Kentucky.

The addresses before the Sections of Legal Education and of Patent Law were made by William Wirt Howe and James H. Raymond, respectively.

Reports from the various committees were received.

Papers were read before the Section of Legal Education as follows:

"The Teaching of the Law in France," by Thomas Barclay, Esq.

"Legal Education in Canada," by N. W. Hoyles, Q. C.

"Notes on the Early History of Legal Studies in England," by Joseph Walton, Q. C.

Papers were read before the Section of Patent Law as follows:

"Masters in Chancery," by E. B. Sherman.

"What Constitutes Invention in the Sense of Patent Law," by Arthur Stewart.

"Shall there be One or More Special Courts of Last Resort in Patent Cases," by Robert Taylor.

"Preliminary Injunctions," by L. L. Bond.

"The Conditions under which Preliminary Injunctions in Patent Cases should be Granted or Refused," by Frederick P. Fish.

An interesting discussion arose upon the adoption of the resolution of sympathy for Maitre Labori, the French advocate, who had been assaulted during the Dreyfus trial.

The officers elected for the year 1900 were:

Charles F. Manderson of Nebraska, president; John Hinkley of Maryland, secretary, and Francis Rawle of Pennsylvania, treasurer.

Mr. C. N. Gregory succeeded Mr. William Wirt Howe as chairman of the Section on Legal Education, and Mr. Fred. P. Fish succeeded Mr. James H. Raymond as chairman of the Section of Patent Law.

Thirty bar associations sent delegates to the meeting of the American Bar Association. Every State and Territory in the Union (except Nevada) is represented in the membership of that body. Georgia has the largest number of members of any Southern State, exclusive of Maryland and Missouri, but inclusive of West Virginia, Kentucky and Tennessee. The total membership of the Association is 1,541.

The influence of this great body of lawyers in moulding public opinion, suggesting needed reforms in judicial rights and remedies, maintaining a high standard of legal ethics, and in advancing the requirements of legal education, cannot be overestimated.

P. W. MELDRIM,

W. E. KAY,

Committee.

APPENDIX I.

SOME CHARACTERISTICS OF MILITARY LAW.

A PAPER READ BEFORE THE SEVENTEENTH ANNUAL SESSION OF THE GEORGIA BAR ASSOCIATION, BY

ALEXANDER R. LAWTON (OF THE SAVANNAH BAR),

WARM SPRINGS, GA., JULY 4, 1930.

In a restricted sense military law is the law governing the army, but in a broader sense it is the law ordained for the government of the military State, and includes not only those governing the army, but also what are commonly called the laws of war. Many of these latter, however, consisting of customs and regulations established by common consent for the government of belligerents, belong more properly to the domain of international law.

Military law, like our common law, is subdivided into the written and the unwritten, of which the first is composed not only of statutes (consisting chiefly of the articles of war), but also of orders, general or special, emanating from time to time from the commander in chief or other high authority, those having permanent value and force being embodied in the army regulations. The unwritten law is derived from, first, "customs of the service," which have been described by a distinguished officer of our army as "a treacherous tribunal"; and, second, "customs of war." As our own common law can now be classed as unwritten law only by the fiction that what was is, and can be found not only written, but printed, in many thousands of expensive volumes, so most "customs of the service" having the force of law have now found definite shape in some paragraph of the Army Regulations, and most of the "customs of war" are embodied in international treaties such as the Geneva Convention and the Convention of the Hague, or in publications of the

several civilized governments such as the "Troops in Campaign" of the United States Army.

The student of military law, in its more restricted sense, may be congratulated that the published opinions on the subject are but few, and that he has no opportunity to examine hundreds of authorities and precedents before reaching a conclusion on the simplest question of law. Military courts deliver no opinions, and there are no published volumes of the few and usually short opinions delivered by the reviewing authority.

The most important and the most interesting military laws proper are what are known as the Articles of War, a designation which I find first used in those prescribed by Gustavus Adolphus, which are hereafter noticed. In their present shape they are derived from an Act of Congress passed in 1874, and but slightly amended since. I have examined many of the precedents which constitute their foundation as far as they are accessible to me, and have found it most interesting to compare those of the present day with some of their barbaric ancestors. Unfortunately no written military codes of the ancient Greeks and Romans have been preserved, and but little is known of them. The celebrated Salic code, originating in the fifth century and embracing matters civil and military, is the earliest of the extant writings of this nature. But the earliest purely military regulations to which I have had access are contained in the brief Ordinance of Richard Cœur de Lion in A. D. 1190, which seems to have been directed chiefly against disorders and fights between the soldiers and sailors in their voyage to the Holy Land. Some remarkable punishments are prescribed. For example, the murderer was bound to his victim and cast into the sea, or, if the crime was committed on land, buried with him. The robber was tarred and feathered, and set ashore at the first landing.

More elaborate were the Articles of Richard II. (A.D. 1385) prescribed also for the Crusades, as is clearly shown by the second article, "that none be so hardy as to touch the body of our

Lord, or the vessel in which it is contained, under pain of being drawn, hanged and beheaded." The principal subjects of these Articles are conduct in battle, the right to prisoners and spoil, the prevention of unsanctioned pillage, and the securing to the officers of their large share. In one case there seems to be an invidious distinction in the infliction of punishments, by a provision that a man at arms shall for certain offenses only lose his horses and harness, while "an archer on foot, a valet, or a boy" shall lose his left ear. Is it because the last named unfortunates must lose something, and had nothing else to lose?

It remained for that great soldier, Gustavus Adolphus of Sweden, to become the pioneer in the promulgation of "Articles of Military Lawes to be Observed in the Warres" (A. D. 1621), which not only defined the various offenses, and affixed penalties thereto, but established courts-martial for the trial of offenders and prescribed their procedure. There are one hundred and sixty-seven of these articles, and they are almost as long as the articles now governing the United States army. They cover a great variety of subjects, many of which it is no longer thought necessary to provide against. The first sixteen articles refer exclusively to religion and religious worship. He who, whether drunk or sober, is guilty of idolatry, witchcraft, blasphemy of God, his Word, or his Sacraments, shall die. A profane swearer shall be fined, and shall publicly and on his knees crave pardon of Almighty God. Attendance at morning and evening prayer to be held in every regiment is prescribed under penalty of fine and imprisonment. The great king shows, however, a lack of confidence in the good behavior of his chaplains, although much inclined to leniency towards their weakness; for it is provided that "if any minister be found drunk or drunkeing at such time as he should preach or read prayer, for the first offence he shall be gravely admonisht"; and provision is further made "that others of the same calling may take example thereby, and be warned of such grosse errors." While strict obedience to orders is carefully prescribed, there is a saving clause for "those who

are commanded on a service which is to our prejudice." Such commands they must disobey. This is perhaps the origin of the present rule that a soldier must obey the lawful orders of his superior. A modern commander of an army in the field would be appalled at the provision that "if any will have his own wife with him, he may." This may be contrasted with an order issued at Chickamauga during the Spanish war that no woman should under any pretext sleep within the camp. This order was said to be directed against a certain brigadier-general bearing a distinguished name, who was accompanied by his wife.

In these Articles of Gustavus Adolphus we for the first time find military courts established—a higher court and a lower court—of which the higher was given jurisdiction over important criminal actions, and appeals from the lower court. It is prescribed in great detail of whom these courts shall consist, and much care is taken to preserve the relative rank and the exact location of their seats at the table. It is curious to know that while civil actions might be tried "within some tent or other where," all criminal actions must "be decided under the blue skies." All officers were prohibited from soliciting for any man that should be lawfully convicted by the court under pain of dismissal, "unlesse it be for his very neere kinsman, for whom nature compels him to intercede."

It is a custom in all military tribunals or councils that the youngest officer should give his opinion first, and the rest in the inverse order of their rank. We find this rule first prescribed in the "English Military Discipline" of King James II., 1686. In his more elaborate Articles of War of 1688 we still find many provisions for the religious welfare and worship of the soldiers, those who blaspheme or who "shall presume to speak against any known article of the Christian faith" having their lives spared, but having their tongues bored through with a red-hot iron. His thirteenth article provides punishment against those who "take counsel among themselves for the demanding their pay." I presume this was because they took counsel among

themselves, whereas it is well known that much better counsel could be secured by going outside the camp. But the most important of his articles is the last, which contains the comprehensive provision that "all other faults, misdemeanors and disorders not mentioned in these articles shall be punished according to the laws and customs of war and discretion of the court-martial." This last is the forerunner of similar provisions in the articles at present in force in this country, and which will be hereafter noticed.

All of these articles of war which have been noticed were simply regulations prescribed by the executive, and none of them had the force of statutory authority. Not until 1689 did the British Parliament legislate upon this subject, when the first British Mutiny Act was passed. It was, however, specifically confined in its operation to less than seven months, and it has in varying form from time to time, and with but slight intermissions, been annually re-enacted by Parliament from that day to the present. The Mutiny Act originally embraced no other subject than that indicated by its title, and the articles of war were left to be prescribed by the sovereign. With the continuous re-enactments, however, came amendments and enlargements, the articles of war being soon given statutory sanction; and, finally, the Army Annual Act of 1881 covered the entire subject. It has been annually renewed since then, and it is curious to note that discipline in the British army would become a matter of persuasion and influence without sanction of law if Parliament should fail in any year to re-enact this necessary law.

It was the first British Mutiny Act which first prescribed the limitation on the hours during which a court-martial may sit, their sessions being confined to the time between eight in the morning and one in the afternoon. This provision has continued, with some slight variation of the hours, in all of the subsequent Articles of War applying to this country, the present provision of the United States being that the court shall not sit be-

fore eight in the morning nor after three in the afternoon. Military writers say that this provision is due to the desire to avoid conflict with other duties, to prevent haste in the determination of causes, and to give the judge-advocate time for making up the record each day. But tradition has it that it was originally enacted because after one o'clock in the afternoon no gentleman (and every officer was expected to be a gentleman) was supposed to be sufficiently sober for judicial deliberation. While this reason has certainly ceased to be operative, the limitation still exists.

The first Articles of War prescribed in what is now the United States of America were the Massachusetts Articles of War, enacted April 5, 1775, with an elaborate preamble reciting the necessity that the Colony should prepare for war with Great Britain. These articles continued, as did all their predecessors, to enjoin attendance on divine service, and to re-enact those provisions which had been common to their predecessors. Some two months thereafter the Continental Congress enacted the American Articles of War of 1775, and these are the first which fail to make attendance on divine worship compulsory. They nevertheless recommended it to all officers and soldiers, and this recommendation has continued to the present day. In an amendment to these articles, enacted November 7, 1775, we first find the curious provision now contained in the 100th article of war, and which has been recently enforced in a celebrated court-martial case, that where an officer is cashiered for cowardice or fraud, the fact shall be published in the newspapers near his home, and that it shall thereafter be deemed scandalous for any officer to associate with him.

The Continental Congress and the United States Congress have since then enacted sundry Articles of War, to wit: in 1776, in 1786, in 1806, and, lastly, on June 22, 1874, were enacted those now in force.

The limits of this paper do not permit any description of the Articles of War. In general it may be said that they prescribe

military discipline, rules of conduct, punishment for violation, the creation, composition and procedure of courts-martial, the review of their sentences and the carrying of them into effect. There are, however, two which should be noticed as being utterly inconsistent with anything to be found in our civil law. Article 62 provides that "all crimes not capital and all disorders and neglects which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing Articles of War," shall be punished at the discretion of a court-martial. Such a provision is absolutely necessary and essential to military discipline, for it is impossible to prescribe in advance all the violations of it which may be devised by the soldier or even by the officer. Here is where the "customs of the service" come into play, for that which may not be *malum prohibitum* by virtue of any statute or written regulation is *malum prohibitum* under this article if made so by "the customs of the service." In cases before inferior courts-martial charges against enlisted men are probably more frequently preferred under this article than all the others combined; and it is often used as the basis of charges against officers.

Article 61 provides that "any officer who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service." This provision has been the safeguard of the honor of the army. It has been universally held to apply not only to military offenses, but to civil and even social offenses. It has been applied to the relations of officers with their friends, with their wives and with their children, and sometimes even to their relations with other men's wives. What constitutes conduct unbecoming an officer and gentleman is a matter purely for the consideration of the court under no prescribed rules, as are damages in the civil law for pain and suffering matter for the consideration of the enlightened conscience of an impartial juror. But when they find him guilty they have no discretion in passing sentence. Dismissal from the service as one un-

worthy of honorable place is mandatory. Brethren of the bar, well would it be with us if our statutes should provide that any lawyer who should be convicted before a bench of fellow lawyers or judges of conduct unbecoming a lawyer and a gentleman should be disbarred, and that it should thereafter be scandalous for any lawyer to associate with him. It would prove a most salutary measure for the prevention of many practices which are a reproach to our profession, but which do not come within the prescribed prohibitions of any of our statutes.

There is the broadest distinction between courts-martial and civil courts. There is no permanent military court. A court-martial is the creature of the officer who convenes it. When it has concluded the particular business for which it was assembled, it is dissolved upon his order, and it ceases to exist. It is a court of limited jurisdiction, and there are no presumptions in favor of the correctness of its procedure. Everything that it does must be laboriously and elaborately recorded from day to day, and in this record it must affirmatively appear at what hour the court assembled, what members of it were present, the authority under which it is convened; that the members were sworn; that the right of challenge was given to the prisoner; that the court was cleared for deliberation, and that it did everything else which is necessary to give legal effect to its findings. It must be composed of not less than five nor more than thirteen officers, and it is prescribed that not less than thirteen shall be assembled where it can be done without manifest injury to the service. Some of its members may drop out during the progress of the case, but the number may not be reduced below five. It has even sometimes been held that new members may come in during the progress of the case, having the record of the previous sessions read over to them. It has no deliberation in public. For every question that arises which requires the consideration of the court "the court is cleared," which in recent years means in practice that the court retires to an adjoining room as being easier than clearing the room of all but its mem-

bers. Its findings (except in certain specified cases) are determined by majority vote, and all its members, including the judge-advocate, are sworn not to disclose the vote of any member. Not even does the record show how the different members voted.

In the civil law, we appeal from the court of one judge to the court of many judges. From the findings of courts-martial there is no appeal, but the sentence can never be carried into effect, and does not become of binding force until the proceedings have been reviewed and approved by the officer convening the court, who may mitigate while he cannot increase the punishment prescribed. He may also reconvene the court for the perfection of its record, or the reconsideration of its findings.

There are several classes of military courts. The highest is the General Court-martial, which has unlimited jurisdiction of offenses committed within the territory commanded by the convening authority by those who are members of the army or attached to it. Jurisdiction over civilians within the theater of war is usually confined to "military commissions," which are not necessarily composed exclusively of officers, and whose procedure is frequently more summary, but is in other respects analogous to that of the general court-martial. The other courts having jurisdiction over the offenses of officers and soldiers are the Garrison or Regimental Court-martial, consisting of not less than three officers, and the Summary Court, consisting of one officer. These have jurisdiction of all crimes and offenses not capital, but their power of punishment is limited to the forfeiture of one month's pay, one month's imprisonment, and in the case of non-commissioned officers, reduction to the ranks. In practice, therefore, their jurisdiction is confined to the minor offenses. The provisions as to the necessity of approval of their finding before being carried into effect which apply to the general court-martial and the military commission apply also to these inferior courts.

Courts-martial are governed by the general rules of procedure

and practice of civil courts, with some exceptions. For example, counsel outside of the army are not admitted as matter of right, but are in practice rarely excluded. A prisoner having no counsel is entitled to have one assigned to him from the officers on duty at the place of session. General rules of evidence are applicable. It is curious to the Georgia lawyer to know that the court-martial has adopted that rule, which does not prevail with us, but does prevail in some courts, that a witness called by the other side may be cross-examined only as to the subjects on which he was examined in chief.

A civil court cannot review the finding of a court-martial. If the court has jurisdiction of the person and the offense, and has prescribed a penalty which is permitted by law, no civil court can interfere. Practically only such questions in connection with its action may be considered by a civil court as properly come up on writ of *habeas corpus* with reference to confinement under civil process, and yet a general court-martial may, and in a recent celebrated instance did, try an officer for offenses which are really not military in their nature, such as embezzlement, false accounts and larceny. Indeed, murder, arson, assault and all other civil crimes committed within the military jurisdiction may be prosecuted before a court-martial or a military commission.

There are many characteristics of military law and military courts which would interest you, and to which I would like to direct your attention did the time permit. I might tell you of the permanent military courts established by the Confederate Congress for each army corps in disregard of all precedent. I might point out the distinction between "charges and specifications" before a military court and indictment before a civil tribunal. I might touch upon the peculiar functions of the judge advocate, who is the prosecuting officer of the court-martial. I might depict to you the trials of the soldier charged with the suppression or prevention of civil disorder, who, being compelled to obey only the lawful orders of his superior, is sub-

jected to severe penalties for any error he may commit in determining their lawfulness; and who, failing to come up to the full measure of his duty, is subject to court-martial and disgrace, and going one step beyond it, is subject to prosecution and suit in the civil court. I might tell you much more. But all this I cannot do without levying upon your patience a greater tax than is permissible under either civil or military laws. I must remember that, as there is a limit to the hours in which a court-martial may sit, there is also a limit to the half-hours during which lawyers may sit.

APPENDIX J.

PATRIOTIC ADDRESS.

COL. R. L. BERNER, OF FORSYTH, GA.

Colonel Berner failed to furnish the Secretary with the manuscript of his excellent address, and all efforts on the part of the Secretary to secure it were of no avail. It is with great regret that the address is omitted.

APPENDIX K.

REPORT OF COMMITTEE ON INTERSTATE LAW.

Mr. President:

The Committee on Interstate Law beg leave to submit the following report:

While it is very desirable that there should be uniformity in the laws of the several States relating to marriage and divorce, the descent and distribution of estates, the execution and probate of wills, deeds and other conveyances, the extradition of fugitives from justice, and in the laws relating to negotiable instruments and, perhaps, those relating to the grant, regulation and control of public and private franchises, there is no visible prospect of effecting the unification in the near future.

The committee suggest that the Bar Associations of the country continue to agitate this question. It is possible that finally the legal profession and the lawmakers of the several States may awake to such a realization of the advantages of uniformity in the laws above referred to as to put forth strenuous efforts to bring it to pass. It seems that legislation framed under the auspices of the American Bar Association and proposed to the legislatures of the different States through their local bar associations, ought to be sufficiently potential to achieve some schemes of uniformity applicable to some of these topics if not to all of them.

Respectfully submitted.

THOS. G. LAWSON, Chairman.

APPENDIX L.

AMERICAN LAWYERS AND THEIR MAKING.

ADDRESS BY CHARLES NOBLE GREGORY, OF MADISON, WISCONSIN,
BEFORE THE SEVENTEENTH ANNUAL SESSION OF THE GEORGIA BAR
ASSOCIATION, WARM SPRINGS, GA., JULY 5TH, 1900.

"The pleader's part is doubtless much harder than that of the preacher; and yet in my opinion, we see more passable lawyers than preachers, at least in France." So said that great human writer, Michael De Montaigne, uttering in medieval France a voice as modern as Plutarch's.

Oddly enough these two professions seem to be equally demanded in the society of our time and country, where neither is supported by the State, since the last census of the United States shows that lawyers and clergymen are there almost the same in numbers.

The old idea was that the lawyer was the parent of discord and contention. *Bonus jurista, malus Christa*, ran the Latin proverb, "A good lawyer, a bad Christian." This was the common sentiment of kings, philosophers, and peasants. So Ferdinand when sending colonies to the Indies "ordained that they should not carry with them many law-students lest suits should get footing in that new world." Plato in his "Republic" declared "That lawyers and physicians are the pests of the country," and Sir Thomas More would have no lawyers in his Utopia as "a sort of people whose profession it is to disguise matters as well as wrest laws," and the rustic prayer "My body from the doctors, my pocket from the lawyers, my soul from the devil" chimes in with the chorus of princes and pundits.

And yet this evil and decried profession has strangely thriven

in that "new world," in the great republic, in our western Utopia. Says Mr. Bryce, "The bar has usually been very powerful in America, not only as being the only class of educated men who are at once men of affairs and skilled speakers, but also because there has been no nobility or territorial aristocracy to overshadow it." "Politics have been largely in its hands."

. . . "For the first sixty or seventy years of the republic the leading statesmen were lawyers and the lawyers as a whole moulded the public opinion of the country."

And De Tocqueville, more than half a century earlier, declared, "If I were asked where I place the American aristocracy, I should reply without hesitation that it is not composed of the rich, who are united together by no common tie, but that it occupies the judicial bench and bar."

Said the late Chief Justice Ryan of Wisconsin, echoing this sentiment with less of moderation, "The American aristocracy of intellect is substantially the American bar," and the Lord Chief Justice of England has recently spoken of the large and commanding influence which the legal profession has attained in these United States.

Far be it from me to agree with the indiscriminate exaltation of the service or the place of the bar, so largely from its own members. All men are in danger of observing with exaggerated appreciation the labors and achievements of their own order and of living in strange oblivion as to what their neighbors of some other pursuit are accomplishing. But the great participation of lawyers in public affairs in this Republic cannot be questioned. We are not subjects of King George the Third, but, as much as any nation on earth, we have given credence to his famous old saying that "Every man is good enough for any place he can get," and the lawyers have been able to obtain more than one-half of the great offices of the country from its foundation down to the present time.

The lawyer in office is now, however, beginning to be overshadowed by the very rich class which is taking the place in

some ways of the "*nobility or territorial aristocracy*," whose absence Mr. Bryce remarked. The lawyers are still elected to the great places, but the chairman of the committee which manages the campaign and the heaviest subscriber to the uncounted treasures of the campaign fund, are of the other class and tend to impair the former undisputed preeminence of the man of law with his majorities. Richard of Warwick is greater than Henry of Lancaster, or Edward of York, the king-maker, is greater than the king.

Said Sir Horace Davy, later Lord Davy, not long since, while he was testifying before a royal commission: "Of course law is the mode of regulating the social life of people, in the interest of the community," and, taking the law which lawyers study and expound in that broad sense, it is easy to account for the important part they play in the public life of any free country. It will not be found that they have any corresponding predominance among the more degraded peoples or under the more despotic governments. "Where there has been freedom, there have been advocates, even in the forests of old Germany," says M. Le Berquier, and he goes on to point out that they are the result and corollary of "the right of defense" and that thus advocacy flourished under the Roman republic but declined under innumerable restraining ordinances in the time of the empire.

It is a mark of advancement when one who deems himself wronged seeks redress before a tribunal of justice by the aid of a lawyer. The fact that an important and well-recognized class of men is maintained in every civilized country of the globe, trained and licensed to assert and defend other men's rights with the persuasions of reason alone, is the highest evidence of the progress of mankind. Cicero could say that all men enjoyed their prosperity under the shelter of the soldier. That is much less directly true now than then, since all private contention is settled before the courts and even in international differences the lawyer's voice is more and more heard and with ever-increasing potency, substituting persuasion for the bloody brawls

of war, and that too where he comes to assert no enacted law, but is armed only with words of reason, saying only "This is right and that is wrong," and compelling justice by an appeal to the common conscience and common sense of the world.

"That justice and its administration," to borrow the words of Lord Chief Justice Russell, "are amongst the prime needs and business of life," is a fact recognized by the existence and position of the bar.

Turning to the history of the bar and of legal instruction in America we find in our colonial period but few lawyers and those mostly of little note until the stirrings for liberty immediately before the Revolution.

While Mansfield was thundering against us and Camden for us at Westminster, Patrick Henry, after six weeks of study, had been licensed to practice and had sprung into sudden fame by winning his famous "Parson's case," against the hated clergy of the established church in Virginia, and was gaining undying glory by his eloquent advocacy of the rights of the people. In the same year in which Henry won his spurs (1755) John Marshall, later Chief Justice, was born, but it was only after his law studies had been broken by service in the army of the Revolution that the greatest of our American bar was enrolled upon its records.

It is not easy to recall legal names of earlier date in this country. Blackstone's Commentaries are said to have been found beside the Bible in the house of many a layman. Mr. Hammond, the learned editor of the Commentaries, says there is abundant evidence that nearly 2,500 copies of them were distributed through the thirteen colonies before the Declaration of Independence.

When Edmund Burke addressed to the House of Commons his famous observations on the conciliation of America, he declared of our thirteen colonies: "In no country perhaps in the world is the law so general a study. The profession itself is

numerous and powerful and in most provinces it takes the lead.

"The greater number of the deputies sent to Congress were lawyers." . . . Again "but all who read, and most do read, obtain some smattering in that science." "I have been told by an eminent bookseller that in no branch of his business, after tracts of popular devotion, were so many books as those on law exported to the plantation. The colonists have now fallen into the way of printing them for their own use. I hear that they have sold nearly as many of Blackstone's Commentaries in America as in England." Those traits which the most philosophic observer in Europe discovered in our forming nation, are constant after the lapse of one hundred and twenty-four years.

Still we may say of the bar "in most provinces it takes the lead." The successful and the unsuccessful nominees for the presidency are of the brotherhood still, and "the greater number of the deputies sent to Congress" remain "Lawyers."

But the early lawyers who first came among our colonists to practice were driven out by the jealous hostility which they met. In Massachusetts the term attorney seems to have been so ill regarded that it was slanderous to apply it to a worshipful person, and in 1632 Thomas Dexter was sentenced to be set in the bilbowse, disfranchised and fined forty pounds for some disrespectful words of the government, culminating with the declaration "that the best of them was but an *attorney*," and two years later John Lec was ordered to be whipped and fined a like sum of forty pounds for saying the governor "was but a lawyer's clerk and what understanding had he more than himself." My valued friend, Dr. Reinsch, has pointed out that Virginia, administered by country gentlemen who looked down upon the legal profession, in 1645 passed an act expelling mercenary attorneys, and eleven years later forbade by statute any person to "plead or give advice in any case for reward." Mr. Austin Fox quoted to the American Bar Association in 1896 a letter

of a farmer written as late as 1782 declaiming against lawyers and predicting that "in another century the law will possess in the north what now the church possesses in Peru and Mexico." Yet out of the thickets of jovial but domineering country gentlemen in the south and of austere but domineering parsons in the north, by the time of the Declaration of Independence, or immediately thereafter, had emerged into leadership a brilliant line of lawyers. Liberty had come, in hope or in fact, and with her these inseparable attendants. Patrick Henry and Marshall we have mentioned in Virginia, Jay, Hamilton, Aaron Burr, Gouverneur Morris, the Livingstons, were known in New York; Oliver Ellsworth and Roger Sherman in Connecticut; Samuel Adams, James Otis and Richard Dana in Massachusetts. These are merely typical names. No one can dispute the fact that from that time to this lawyers have held an important place in the public life of America. But in the beginning and long afterwards the education of lawyers was as ill-provided for as in the mother country.

The first law lecture under collegiate authority that we know of delivered in the United States was on the 15th of December, 1790.

A wit at a Philadelphia dinner proposed "the memory of the three great Philadelphians: Benjamin Franklin of *Boston*, Albert Gallatin of *Geneva*, and James Wilson of *Edinburgh*." This same James Wilson was a highly educated Scotchman who signed the Declaration of Independence, and took prominent part in the convention which framed our Federal constitution. He was later appointed to a seat on the supreme bench of the new nation he had helped to form. In 1790 he was elected to fill the professorship of law just created in the University of Philadelphia and on the day named he gave his opening address before an audience we would have all liked to see. The judges of the courts and the bar were there to do honor to the first collegiate attempt at legal education; so were the chief executive, and the legislative departments of the commonwealth of Pennsylvania

and of the city of Philadelphia. There, too, were both houses of Congress, yet unshorn of the founders of the republic, and there was General Washington, our first president, attended by all his cabinet. Mrs. Washington, too, graced the occasion, and Mrs. Hamilton, the daughter of the heroic Schuyler, and many "powdered dames," whose presence the lecturer acknowledged with heavy and elaborate gallantry, making ponderous allusion to the unusual embarrassment of speaking before "the fair." But his labored written discourses, begun with such distinction, were continued for little over one year and are incomplete, not covering the ground intended, although published after their author's death. He was shortly engaged to prepare a digest and codification of the statutes in force in Pennsylvania and turned his leisure to that task (for the Supreme Court then had constantly to adjourn for lack of business), but, after much labor and expense, he was denied reimbursement by the legislature and left this task likewise unfinished.

A more modest undertaking by New England men in a Connecticut village had been begun in about 1783, when Tapping Reeve (author of the treatise on Domestic Relations which all American lawyers still know) began to give legal instruction at Litchfield Hill. This is called the first regular school for instruction in English law. In 1798 Mr. Reeve was appointed a justice of the Supreme Court of Connecticut, and later became its chief justice, and Honorable James Gould (of Gould's Pleadings in Civil Action) from that time shared his work. When Judge Reeve retired Jebez W. Huntington took his place, but these three were the only instructors the famous Litchfield school ever had in its life of half a century. Its attendance in 1813 rose to fifty students, a great number for that time, and it added to the bar about one thousand of our early lawyers. It was a private, unincorporated, unendowed school and had no power to confer a degree. Mr. Reeve and Mr. Gould lectured and the little band of students took down their discourses in full and generally neatly transcribed them, after comparing

notes with their fellows, in five large volumes. Mr. Huntington held an examination every Saturday on the work of the preceding week. In 1833 this pioneer law school was discontinued but Judge Samuel How, having studied at Litchfield, had ten years earlier established a like school at Northampton, with his former law partner, Honorable Elijah H. Mills, United States Senator from Massachusetts. Mr Mills's partner, Mr. Ashmun, was joined to the corps of teachers in 1827, but the average attendance never seems to have exceeded ten, and in 1829 it was closed on Mr. Ashmun accepting an invitation to join the faculty of Harvard Law School.

Isaac Royal of Massachusetts, true to his name, went to England after the battle of Lexington and died there in 1781. Two years before his death he made his will in England, devising to Harvard College of Cambridge, Massachusetts, for the endowment of a professorship of law, or physics, or anatomy, more than 2,000 acres of Massachusetts land. This devise was not realized on until 1815, when nearly \$8,000 having been derived from it, this was first devoted to establishing a professorship of law. An income of about \$400 arose from the fund, the fees of the students were added, and Mr. Justice (later Chief Justice) Parker of Massachusetts was appointed Royal Professor. Two years later, 1817, Asahel Stearns was appointed University Professor of Law, and the college statutes required him to open and keep a school in Cambridge for the instruction of the graduates of the University and others prosecuting the study of law, and this is commonly given as the date of the founding of Harvard Law School, until recently the oldest in the country.

Now, however, the law department of Santa Tomas University of Manila, founded in 1605, makes that claim.

The attitude of Harvard University as to expansion is probably not due to this rivalry however.

The average annual attendance at Harvard for the first ten or eleven years was eight.

In 1829 Nathan Dane of "Dane's Abridgment," and for

whom is claimed the authorship of the famous ordinance of 1787 for the government of the Northwest Territory, generously gave the struggling school the profits of his "Abridgment" of the law. This secured the services of Joseph Story, who, Mr. Dane requested, might be the first incumbent in the Dane Professorship, exactly as the gift of the profits of Viner's Abridgment secured Blackstone to Oxford. Dane's gift amounted to \$10,000, and at his death he added \$5,000 more. For the sixteen remaining years of his life Judge Story continued to hold this chair, and thus were written for that little, meagerly endowed law school, "Story's Commentaries," which Mr. Lecky, in his recent work on "Democracy and Liberty," ranks beside the Constitution and the Federalist as unsurpassed among the intellectual achievements of America. They made the school national in scope and reputation, and began the prosperous career of that law school, until so recently, most venerable in years and easily the first in reputation and accomplishment among those of this nation.

The Yale Law School took its origin in the teaching of law privately by Mr. Staples at New Haven. He presently invited other lawyers to his assistance. In 1824 the names of the students of this school were first printed in the Yale catalogue, and two years later, the friends of Chancellor Kent having established the Kent Professorship of Law at Yale, Judge Daggett, the head of the Staples School, was chosen to fill it, so that the school was united with the college.

The University of Virginia founded a law school in 1825. Some lawyers educated at the Litchfield school established the Cincinnati school in 1833, which was the first west of the Alleghany mountains.

The Albany Law School, which long held a leading place, was founded in 1851 and has since been affiliated with Union College.

In 1852 the trustees of the University of Pennsylvania appointed a faculty of law at Philadelphia.

In 1858 the trustees of Columbia College established their school of law in New York with a two years' course of instruction, calling Professor Theodore Dwight from Hamilton College to its head, where he continued until near his death, meeting with great success to the last.

In 1859 the Law Department of the University of Michigan was opened with a faculty headed by Thomas M. Cooley, destined to attain from that beginning high judicial place and a classical fame as a law-writer.

From that time on law schools have rapidly increased in numbers, attendance and equipment.

In the west as well as the east, the liberality of well prospered lawyers and men of fortune has been joined to the authority of the State in establishing these nurseries of the bar, as in California where ex-Chief Justice Hastings, in 1877 gave \$100,000 to found the Hastings School of Law in connection with the University of that State.

University after university has added to its staff a faculty of law, and large attendance has almost instantly answered to liberal opportunity, as in the case of Cornell University, whose Department of Law dates only from 1887, yet, with a strong faculty and splendid library, it is already one of the great schools of the country. Now we may say that hardly a leading university or great city in the country lacks its well-established law school.

The number of students in these institutions illustrates their growth better than any list of their names. Thus we have seen, say eighty-seven years ago, one school in existence with at its best 50 students in attendance (less than one-half as many as have matriculated in the junior class of the College of Law of my own University of Wisconsin in a single year). In 1870 the law schools of the nation returned 1,611 students; in 1886, 3,054; in 1891, 6,106; and in 1894, more than 7,600 students were listed in their catalogues, and 6,379 of the above law students were residents of the State in which they were studying; that is more than five-sixths of them. In 1894 there were enumer-

ated 72 schools of law within our borders, all but 7 of them associated with universities, and in 1896 the number of schools had increased to 85 and of law students entered in them to 9,607. These are the figures given in the report of the American Bar Association for 1896, and the attendance of seven schools is omitted for lack of information as to the same, so that the total number of students probably exceeds 10,000. The figures compiled for the Paris Exposition of this year shows the number of law schools as 86, and matriculations in them for 1898-9 are 11,883 in round numbers, 12,000.

This all shows that the question, long debated, of whether aspirants for admission to the bar will submit themselves to the requirements and value the advantages of schools of law, has been roundly decided in the affirmative.

The old method of admission to the bar was by the courts on examination by an extemporized committee of lawyers, named by the judge, and this still prevails in many States. No method could be less adequate under the best, or more grotesque and absurd under inferior judges. Too often the standard set was on a par with that of a military president who, desiring to appoint an old protegee to a Federal judgeship answered an earnest protest from his advisers at the incompetence of the candidate by saying "*But he has studied law a whole year—nights.*"

Theodore Dwight related that in a court presided over by the accomplished Mr. Justice Nelson, he was called to practice on an examination in which the only question asked him was the fundamental one, on what morning of a particular week in the term of the Supreme Court a specific motion should be made, the day being fixed by the rule of court. No one can doubt that the Virginia student who, on his examination, being asked "What is a fee simple?" answered in good faith, "About two dollars and a half," was promptly certified to be proficient in the law.

Now, in a considerable number of States, a permanent commission of lawyers appointed by the highest court has exclusive control of examinations for the bar, save only as the degrees of

certain colleges of law by statute take the place of such examinations.

The wisdom of requiring adequate legal training for admission to the bar is hardly an open question, but the best way of affording such training is still a burning question.

When in 1823 by the changes of the New York constitution James Kent was legislated out of his great place as Chancellor, at the age of sixty, that being the limit of age allowed, he was as once invited to take the position of professor of law at Columbia College, and accepting, he wrote and read to his classes "Kent's Commentaries" much as Sir William Blackstone at Oxford in the preceding century had written and delivered his even more famous compendium, not for the technical training of candidates for the bar, but for the education in the law of college students as a branch of general knowledge. He held no examinations, he prescribed no course of study, his instruction led up to no degree in law. He and the great New Englanders, Story, Parsons, and Greenleaf, seem to have quietly delivered their well-written discourses on the law with little attempt to exercise the powers of the student other than those of memory, and their methods were the usual methods of the day.

Mr. Theodore Dwight is particularly identified with a reformation in law teaching, marked by a more animated participation of the students by questions and answers upon certain assigned reading in a text-book. Under this method, often called the Dwight method, the instructor also expounded the text orally in familiar language and with pertinent illustration and citation. This is still perhaps the prevalent method.

About thirty years ago Mr. Langdell was called to the Dane Professorship of the Harvard School and introduced a still more advanced method, namely, the inductive method, or "case system," so-called, by which almost the entire instruction in many branches is made to consist in reading decided cases, carefully selected so as to illustrate and exhibit the formation and growth of the main principles of the law. The students are

called on to state the facts of the case discriminatingly, and then the decision; they then analyze and discuss the reasoning, making it the subject of zealous debate over which the instructor merely presides, aiding in drawing out the discussion, calling on students to apply the principles to various kindred but not identical facts, comparing the case with others on the same subject and summing up at the close. This is the system now prevalent at Harvard and Columbia and in part at Cornell, University of the City of New York, Pennsylvania, Northwestern, Michigan, California, Colorado, Iowa, Leland-Stanford, Western Reserve and Wisconsin. The Harvard men say for it that it has made the law school the hardest working department in their University. That it takes care of itself where it is once introduced; that the students cannot be kept in the classes where it is not used; and President Elliot of Harvard has been able to announce this very practical result, that more offers of employment for its graduates at living rates were made to the law school than there were graduates to take. It has won the unqualified approval of Judge Oliver Wendell Holmes, Jr., educated under a different system, and of James Carter, Esq., and Honorable Joseph Choate, commonly ranked as the two leaders of the New York bar, and the commendation of such divergent but valued teachers of and writers on law as Austin Abbott, Henry Wade Rogers, Emlin McLane and Judge Dillon, and if the writer may humbly add his own experience, it seems to make the principles of the law living and concrete, and to immensely aid the student to assimilate them. He sees them grow and sees them practically applied to more and more intricate and difficult facts, and observes their practical use. The general rules of law, formulated as abstractions, are difficult to remember or comprehend, and yet more difficult to apply until, as by this system, the student comes to know them "from their youth up." This method of teaching law is kindred with the best method of teaching other sciences, and the more we investigate the more we discover the wonderful parallelism in all science and all good methods.

Too often the dullest and most repellant reading in any branch for a beginner is a so-called "Elementary work." The generalizations there displayed are the last results of extended study and comparison. The author himself could not understand them but for the antecedent study of the details on which they rest, and the unhappy beginner who is called on to digest the condensed extract of a score of cases in a rule of ten lines, is as badly off as the patient who is compelled to swallow the extract of one hundred pounds of beef in a pill of twenty grains. Food cannot be permanently supplied in that way, neither can instruction. The normal stomach and the normal mind are constructed to thrive better when they themselves in great part condense and digest the nutriment which they require.

For instance, a beginner reads Carwardine's case¹ where the brother of a murdered man offered by a printed handbill a reward of 100 pounds for information leading to the conviction of the murderer. A wretched woman, having been beaten by a male companion so that she believed herself dying, partly to ease her conscience and partly in revenge (a truly feminine combination of motives) gave information which led to the conviction of her assailant of the murder in question. She claimed the reward. It was refused. She sued for it and the old English court of King's Bench awarded it to her, Chief Justice Denman holding the offer was made to all the world, and she had brought herself under its terms, whatever her motives, and could recover as on a contract. Then the student passes on down the line of law-making cases on the subject of offer and acceptance, until he considers a case decided by our own Wisconsin court where a husband,² finding a hotel in flames and his wife on the third floor with her escape cut off by the fire, cried out, "I will give \$5,000 to any person who will bring the body of my wife from that building, dead or alive." The foreman of the local fire depart-

¹Mary Ann Williamson v. Wm. Carwardine, 4 B. & A. 621; King's Bench 1833.

²Rufus v. Page, 55 Wisconsin, 496, decided 1872.

ment thereupon, at imminent peril to his life, entered the building and succeeded in reaching the unfortunate woman. He found her already suffocated and lifeless, but succeeded in rescuing her body and restoring it to her husband. He asked the reward, but the husband refused it, claiming that the foreman had done no more than his duty, and moreover had given no notice that he accepted the offer. Our Supreme Court held that it could not be shown by ordinance or decision that any duty of rescuing persons or bodies rested in these firemen, that the foreman went beyond his duty when he entered the flames at the peril of his life, that his act accepted the offer, and decreed to him the promised reward.

When the student has read this sequence of cases and discussed them zealously with his fellows and his instructor, he certainly has a hold on the law of "offer and acceptance," that it is difficult to get from the study of these cases by any one else, however neatly that other person may state the rules derived from them.

So much for the preparation of the lawyer. A word now as to one or two indictments brought against him.

In his address as President of the American Bar Association, delivered in 1889, the late David Dudley Field, called the greatest codifier since Bentham, said that it was difficult to make an exact computation of the number of lawyers in the United States, but he estimated it at 66,000 in a population of 60 million, and he pointed out that France with a population of 40 millions has 6,000 lawyers and 2,400 other officials who do the work of attorneys with us. Germany, with a population of 45 millions, has in the same category 7,000, so that, he adds, "the proportion of the legal element is in France 1 to 4,762, in Germany 1 to 6,423, in the United States 1 to 909." But the census of 1890 shows that he much underestimated the number of lawyers in this country, there being 89,630 instead of 66,000, fully one-third more, so that instead of there being one lawyer to 909 persons, as estimated, there was by actual computation, one lawyer

to every 699 persons. I have only to say that this extraordinary preponderance is the result of the laws, apparently, of supply and demand freely operating, and that it is largely accounted for by the fact that our lawyers confine themselves less exclusively to the duties of the profession than do those of other lands, combining in most small communities the business of insurance, the care and sale of real estate, and money-lending with the pursuits of the law. As Mr. Bryce declares in contrast to the English custom, many members of our bar "are practically just as much business men as lawyers." Then the system of appeals and rehearings allowed by our law is peculiarly extended, answering to the humane if exaggerated feeling dominant among us, which wishes every suitor or defendant to be fully heard and reheard and again reheard, and which is in marked contrast with the apparent purpose of many foreign tribunals to even harshly abbreviate hearings and often to compel convictions. Then, too, the enormous participation of the American lawyer in public office tempts many to the bar and occupies a great number of those who have been called there.

As to the relative merits of the English and American practitioner, it is almost impossible to speak. Nothing could be less worthy of praise than the lower type of lawyer in the United States. It is not exacted or expected that he should be a gentleman, a man of education or intelligence, and the safeguards against dishonesty or bad character are almost as slight as against incompetency. A western chief justice, however, recently said in my hearing, that an American lawyer of distinction and standing, but less than the highest rank in this country, had, when near fifty years of age, been called to the English bar and been able thereafter to win, perhaps, the first place at that bar, if we may judge by the considerations of his fellows or by his fee book. He referred, of course, to the late Mr. Benjamin. Mr. Benjamin, when he left America, had not yet written his great classic on Sales, and at that time it is believed Mr. Pitt Fessenden of Maine, Mr. Benj. Curtiss of Bos-

ton, Mr. Chas. O'Connor, of New York, and Mr. Reverdy Johnson, of Maryland, were contemporaries who had higher professional reputation in America than Mr. Benjamin, and the venerable Wm. M. Evarts, of New York, might be added to this list. No similar case of an English lawyer winning the first eminence at the American bar is recalled, although now and then a like *bouleversement* of literary rankings has been seen.

I saw in my London Law Times with some chagrin the late criticism of our bar by Sir Richard Webster (just advanced to the Mastership of the Rolls and the peerage as Lord Alverstone), who recently said, in an after-dinner speech at Leeds, that his experience in meeting members of our bar before international tribunals convinced him that our system of uniting all functions of the lawyer in the general practitioner was inferior to theirs of a divided profession of barristers and solicitors, since it forced our lawyers to give too much attention to details. I was in some part consoled when an eminent member of an international commission, which Sir Richard favored with an opening argument of thirteen days' duration, assured me later that every member of the commission would think that Sir Richard himself exemplified the fault he laid at our door, and that the best argument heard by the commission came from Hon. Benjamin Harrison, an American lawyer.

The most candid discussion of our bar by a foreigner of competence, if we may term an Englishman a foreigner, we find in Mr. Bryce's "American Commonwealth," and that accomplished writer is a barrister in full practice as well as a law professor, a privy counselor, and member of Parliament. After justly condemning our system of admission to practice, he says:—

"Notwithstanding this laxity, the level of legal attainment is, in some cities, as high or higher than among either the barristers or the solicitors of London. This is due to the extraordinary excellence of many of the law schools. I do not know if there is anything in which America has advanced more beyond the moth-

ed country than in the provision she makes for legal education." "Twenty-five years ago" (He wrote this in 1888) "when there was nothing that could be called a scientific school of law in England, the Inns of Court having practically ceased to teach law, and the universities having allowed their two or three old chairs to fall into neglect, and providing scarce any new ones, many American universities possessed well equipped law departments, giving a highly efficient instruction." "Even now, when England has bestirred herself to make a more adequate provision for the professional training of both barristers and solicitors, this provision seems insignificant beside that which we find in the United States, where, not to speak of minor institutions, all the leading universities possess law schools, in each of which every branch of Anglo-American law, *i. e.*, common law and equity as modified by Federal and State constitutions and statutes, is taught by a strong staff of able men, sometimes including the most eminent lawyers of the State. Here at least the principle of demand and supply works to perfection. No one is obliged to attend these courses in order to obtain admission to practice, and the examinations are generally too lax to require elaborate preparation. But the instruction is found so valuable, so helpful for professional success, that young men throng the lecture halls, willingly spend two or three years in the scientific study of the law which they might have spent in the chambers of a practicing lawyer as pupils, or as junior partners."

Perhaps the critic suggests that Mr. Bryce so wrote in a work intended to have and which met with an enormous sale in the United States, but in his testimony before the Royal Gresham Commission, three years later, which was not for American ears or market, he held up these law schools again as models, declaring that the plan of systematic teaching of law has proved so successful in the United States that he advocates it positively in England; and throughout the enormous mass of testimony by England's greatest judges, lawyers, and law-writers one finds that no one questions the excellence or superiority of the American

system of legal education. Mr. Dicey, Vinerian Professor at Oxford and Q. C., declared to the same commission: "The law schools in America possess a reputation which is unlike anything which is possessed by any law school here."

Sir Frederick Pollock, Corpus Christi Professor of Jurisprudence at Oxford, said that "the American law schools have convinced the profession there that they do teach law in an efficient way, in a way which makes a man not only a better instructed lawyer, but a better practical lawyer."

A most pointed comment on law school and office education in the United States was heard when, at the meeting of the American Bar in 1896, Mr. Austin Fox of the Board of Law Examiners of New York reported that the Board had examined 1,050 applicants, 793 of whom had had law school training and the rest office training of at least three years. Fourteen per cent. of the law school men failed to pass and twenty-six per cent. of the office men; a difference of nearly 100 per cent. in favor of the law schools.

In the interesting discussion before the Gresham Commission a defect is pointed out common to the legal instruction of both countries in that it omits all training in administrative and colonial laws, and in the law needed by persons entering the civil service, and the complaint is that the teaching of international law, useful for diplomats and all having international dealings, is but poorly provided for. The great school which is referred to as affording such instruction seems to be *L'Ecole Libre des Sciences Politiques* in Paris, founded by M. Boutmy, resting mainly on his great reputation, not aided by government or by endowments, but meeting a remarkable success. The Royal Commission in the scheme which it reports for the Gresham University provides that all these great branches shall be taught in the department of law, but it does not apparently seek to require proficiency in them as a prerequisite to a degree or for admission to the bar. The necessity for such branches has not been so keenly felt in America, where it has seemed folly to fit one-

self for a public career so long as fitness would in very few instances aid one to get or assist one to retain public place.

With about 85,000 places now in the classified Federal civil service of the United States, however, and with the victorious march of civil service reform from its Federal conquests on to State and municipal victories, hardly less significant, the time is near, if not already here, when either our law school or some kindred departments must provide the needed training for these great bodies of public servants who are in the future to be fitted for their work.

The more complete system of the French and German schools in this respect reflects an official service to which it is adapted, where fitness earns a place and excellence secures regular advancement, although, if we may trust Mr. Lecky, France is sadly relapsing in this respect at the present time. As has been well said, you would not stop to repair your plumbing while your roof was in flame, so with us the reform in the methods of getting into and out of the ministerial public service is the first crying necessity, and the special training needed by those entering a reformed service will be provided rapidly thereafter.

The bar, however, must take a great share of responsibility, not only for what is praised, but what is censured in our laws and their administration, because of the predominant part it has had in making and in executing them, already generally alluded to. J. H. Benton, Jr., Esq., of the Boston Bar, in a remarkable paper read before the Southern New Hampshire Bar in 1894, has pointed out the increasing proportion the bar of the United State bears to the entire male population. Thus, in 1850 there was one lawyer in every 494 males; in 1860 one in every 484 males; in 1870 one in every 479 males, and in 1880 one in every 398. The computation of occupations was not completed for the census of 1890 when he wrote, but they have since been obtained by the present writer, and the proportion there shown is one lawyer to every 358 males. This increase of the bar as compared to the male population is slightly but not materially

affected by the fact that this last census shows 208 female lawyers licensed in the United States. It may be remarked in passing that the Benchers of the Ontario Law Society of Canada have passed rules admitting women to the bar, which require that the female barrister shall appear in court in a black dress under a black gown with white collar and cuffs and bareheaded. No such sobriety of dress is imposed on our 208 sisters of the profession, they having no official dress prescribed by rule or by custom. They retain their feminine traits and embellishments. In fact I have known a lady of the bar of my own State on meeting with an adverse decision from the court, instead of prosecuting an appeal, to throw a glass of water in the judge's face. I believe the laws of Georgia do not admit women to these privileges.

The proportionate increase of the bar inclines the statistician to compute how soon this will become literally a nation of lawyers, as England has been called a nation of shopkeepers. Perhaps this extraordinary recruiting of the bar is in part a result of this same great participation in public affairs accorded to the bar in America. That, and the life freed from manual labor, the livelihood earned by the head and not by the hand, the social recognition accorded to the more successful lawyers, all these have lured the most ambitious and aspiring youth in throngs to the bar. There is always room at the top, and the incomes of the leaders are still as great as those of the leaders of the much more limited English bar, but the earnings of a far greater number at the other end of the line afford a bare subsistence. The profession is an open one. Substantially no general education is demanded for admission to it in most of our States, and a year's zealous reading in most States, two years in almost any, and three years, it is believed in any, will enable the ordinary man to come to the bar. When he has got there he merely stands with his fellows waiting for such employment as comes to him in a strenuous competition.

Numerous, too, as the lawyers are, there are in the United States over 15,000 more physicians and surgeons than members

of the bar. There are, as we have seen, substantially the same number of clergymen and lawyers, a man of God to offset every one of those disciples of the law, and there are more than five times as many teachers and professors as there are lawyers, and these last are largely maintained by the contribution of the public, exacted by law.

Perhaps part of the attraction of the legal profession lies in the unique position of our courts. Parliament is supreme in England, and its acts cannot be questioned by the highest judicial tribunal.

Lord Justice Bowen has said Parliament in its omnipotence can declare that a horse shall mean a cow or a salmon an oyster regardless of all laws of natural history.

The legislative and executive branches are not supreme with us. There is always a written constitution, State and Federal, with which their acts must be compared and by which they must stand or fall. This function of declaring them valid or otherwise on such comparison belongs to our courts, and the bench is only, as it were, a committee of the bar assigned to a special, arduous but honorable duty; the judges are still of the brotherhood. This great concession of power to the judiciary, made as a new thing in the world by our Federal constitution, is a constant factor in maintaining the power and importance of both bench and bar. What is the greatest triumph in Mr. Joseph Choate's brilliant life? The winning of the decision from the Supreme Court of the United States against the validity of the income tax. A decision reached by a closely divided court in which one justice is known to have vacillated until the last. It utterly deranged the revenue of the nation and was an exercise of power undreamed of in English or European courts; yet it met with instant acquiescence from the government and the people. Such a success as Mr. Choate's could not come to an English lawyer. The great reputations at the English bar of to-day seem to have been derived mainly from sensational libel and divorce suits, and none can originate from great constitu-

tional discussions. The English judge is made important by wig and gown and javelin men and great state and income, unlike the judges of any other nation, but he has no such power as this which our courts, under the impulse of our bar, can exercise.

Lawyers are students of precedent and have been called by a bold and bitter tongue "the conservers of old abuses." So they have sometimes been, deserving the taunt of Voltaire and in this respect the clergy and all great seats of English learning have stood with them; but in a society where many supposed safeguards have been surrendered, where many untrained, shifting, passionate, dislocated elements are contending, this great conservative element plays no mean or useless part. Curiously enough, too, the bar furnishes not only a good deal of the ballast for the Ship of State but a large part of the sails as well. Many of the leaders of reform have been lawyers, as Bentham, Brougham and the humane Romilly in England, the radical Sumner, Seward and the humane Lincoln in America. In the late constitutional convention of New York, which gave the guaranty of constitutional enactment to so many advanced reforms, 133 members out of 175 were lawyers, and Mr. Choate was in the chair.

When we turn back to review the course of the United States and consider the Declaration of Independence and conceive its boldness in the then world and its advancement, we must remember that twenty-five out of its fifty-six signers were lawyers. If we look to the constitution of the United States and allow the wisdom it evidenced and the safety it has assured, we must remember that thirty out of the fifty-five members of the convention that framed it were lawyers; that of the twenty-five presidents who have sworn to observe it, twenty were lawyers; and of the twenty-four vice-presidents, eighteen have been lawyers; and the incumbents last chosen were both gentlemen of the bar. Of 234 cabinet officers up to 1894, appointed by those presidents, 219 have been lawyers—all but fifteen. That out of the 1,157 governors of States, Mr. Benton, who is still

my authority, was in 1894 able to find the occupation of only 978 and 578, far more than half of those were lawyers. That up to 1894 in the Senate of the United States, 3,122 senators had been seated, and of these 2,068, more than two-thirds, were lawyers; in the lower House of Congress 11,889 representatives had been enrolled, and of these 5,832 have been lawyers; that in some sessions as high as seventy-one per cent. of both houses have been lawyers, and the average has been fifty-three per cent.; that *ex necessitate* the entire judiciary has been taken from the bar. When we consider all this we must confess that this nation in its foundation and in 124 years not without prosperity and achievement has trusted much to the lawyers. *Magna pars fui*, the bar can well say, "A great part of this I was."

One cannot conceive that such a reflection should be other than grateful to an American lawyer who loves his profession and his country alike.

A jurist has been well described as one who knows something of the laws of every country but his own, and there are those who in the same way know something good of every country save their own, but that unhappy class is fortunately limited.

It plainly behooves an American lawyer to consider solemnly and gratefully the noble past of his country and the great participation of his profession therein. It ought not to be the parent of boastful vaunts on the part of the bar of to-day, but of earnest effort to prepare for and to fulfill in no unworthy manner the high and serious duties devolving upon it. Not to seek to become good lawyers, as the farmer said, "by reading all the morning and talking all the afternoon"; not to be what Erasmus called the lawyers of England in Henry the Eighth's time, "a most learned species of profoundly ignorant men"; but to be the enlightened and trained servants of justice, shaping the law to its heeds, participating more than their fellow men, not only in administering, but also in creating and declaring the law, and therefore as trustees for all doubly bound to seek the good of

all. Said President Josiah Quincy of Harvard University in 1832 at the dedication of the Dane Law School, "What profession more deeply influences the condition of society, either for evil or for good?"

The bar ought to be zealous for wise law reforms, because they can hardly hope to prevail without its aid, since other men trustfully look to it for guidance in such matters. As to these reforms the public is the client of the bar to which it owes a professional duty, faithfully to be performed. Large freedom and high civilization have never coexisted in the world without the great advancement of the profession which stands for the right of defence, for the systematic appeal to justice. We cannot read the future, its misty and shimmering veil deludes us only with a reflection of the past, but we may well believe that D'Aguesseau, when he called his brethren of the bar of France "*An order as old as the magistracy, as noble as virtue, as necessary as justice,*" spoke not for one, but for all times and all civilized countries, and most of all for the Great Constitutional Monarchy and the Great Republic, the homes, as they are, of sober and stable liberty.

APPENDIX M.

JURIES AND JURY TRIALS.

PAPER BY MARCUS W. BECK OF THE GRIFFIN BAR.

"Keep ye judgment and do ye justice," the prophet delivered as a mandatory message to man from him who is the habitation of justice. And man's best endeavor to execute the command is the foundation of human justice.

"Do ye justice," the casuist construes as a command to be righteous and just in our acts and thoughts and in our judgments of the motives and conduct of our fellow man.

"Do ye justice," the publicist construes into a command to frame and establish government and social institutions, having justice for their end.

"Do ye justice," the lawyer and jurist contrues into a command to settle and decide, conformably to truth and right, the issues that arise when one man asserts that another has invaded some legal right of his, or that he fails to discharge some duty owing to him, or that he withholds that to which the complainant is entitled, all to his damage, pounds, shillings, and pence; or to determine or aid in determining, with like conformity to truth, the issue that arises when the commonwealth, through its duly appointed agencies, charges against an individual some violation of a public law.

As construed or appointed by the first, the endeavor to execute the command "Do ye justice" has given us systems of ethics. As construed by the second, it has given us government and forms of society; as construed by the last, it has given us laws, forms of procedure, securing us against deprivation of life, liberty and property, except by due process of law.

These departments of human endeavor are sufficiently marked

and defined, though by no means mutually exclusive as is required in a strict logical division.

For the purposes of this paper we are concerned with the endeavors of the casuist, the publicist and the lawyer to apply and execute the all-important command only in so far as it has had joint fruition in the establishment of one of the most ancient, noblest and most effective of human institutions, having for its end the doing of justice, the establishment of truth, the vindication of the law where rights are involved or crime is committed; an institution which we name now in general terms, as we did when it was quite different, both in degree of perfection and effectiveness, "Trial by Jury."

As the Roman in the days of Rome's strength and glory was fond of tracing the origin of the eternal city to ancient and mysterious sources; so many delight in tracing back evidence of the existence of juries and jury trials, until lost amid the shadows of civilization's dawn.

In the elaborate note upon the text of Fortescue, Amos collects authorities who trace its origin to Athens, others who seek its origin in Gothic institutions, many who claim it as a Saxon institution, and still others who assert that the first instance of trial by jury was in the reign of the Conqueror. And, as we all remember, Blackstone tells us that Bishop Nicholson ascribed the institution to Woden himself; while Blackstone finds it to be older, not only than the Conquest, but older than the Saxon invasion itself.

So irreconcilable are the authorities as to the true origin of jury trials that the settlement of the question of the parentage of this piece of juridical polity seems almost as much a matter of taste as of judgment. You can follow the authorities back to Hercules, or you can stop at Alfred the Great.

But whether it was the natural outgrowth of village moot of Friesland or Sleswick, or whether Alfred the Great devised it and put it in use, or whether it was created at Westminster Hall during the troublous time when the Red Rose and the White were

struggling for supremacy, we know that the statute 24 Geo. II., C. 18, which finally abolished the requirement that a certain number of hundredors should be on the panel, gave to the jury that constitution and efficacy as an agency for determining judicially from evidence publicly given the truth of issues involved in the causes submitted, and the contemplation of which led Blackstone to apotheosize the jury trial as the crowning glory of the English law and as the most transcendent privilege that any subject could enjoy, or wish for, when about to be affected either in his person, his liberty or his property.

This institution so lauded, and justly so lauded, is our heritage and it behooves us, as lawyers, the chosen ministers of the law, to inquire frequently of ourselves, how have we guarded and preserved this heritage?

Has this institution, as is sometimes charged, fallen from its high estate?

Are there dangers menacing it against which we can shield it?

How have we guarded it?

To this first question the Georgia lawyer need not hesitate to seek and to give a candid answer; for whether as a practitioner, taxing all his resources to achieve victory in every forensic struggle, or as members of the judiciary, Georgia lawyers, by precept and practice, have sought to keep it beyond the reach, not only of impairment and corruption, but beyond the reach of suspicion.

With whatever degree of toleration our supreme court may have regarded the relaxation of other principles and rules of practice, touching all the rules that tend to secure for the jury immunity from all improper influences, from the moment it is charged with a cause, there has been no relaxation or latitudinarian construction. In all the cases, from the 1st Kelly to the 108th Ga., the rule and *dicta* have been in strict accord so far as relates to shielding the jury from the approach of improper agencies, and as to the inviolability of the right to a trial by twelve men, superior to all exceptions.

In the case of *Monroe v. The State*, 5 Ga. 85, amid the many grave issues that crowd the voluminous record, none were discussed with so much force, vigor and earnestness as those relating to the paramount importance of upholding the trial by jury in all its purity.

Trite from some points of view, the subject of juries and jury trials had already become. Trite it had been for centuries. Fortescue had discussed it for the edification of a prince; Coke for the lawyer; and Blackstone for every man with a taste for polite literature. And multitudes of their disciples and critics have discussed or rhapsodized about it or inveighed against it with varying degrees of force and eloquence, and for an infinite variety of purposes.

But whether the subject was stale or fresh, in this case of *Monroe*, *supra*, counsel took it up with eager zeal and fiery energy. And what an array of counsel there was. Appearing for plaintiff in error were Lyon and Clark, Hawkins, Bailey, Strozier, Warren, Colquitt, Crawford and Francis S. Bartow, besides several others not unknown to fame. Judge Lumpkin delivered the opinion of the court, displaying all his wonted force, fire and learning, and reviewing, restating and reinforcing the rulings and *dicta* looking to preservation and perpetuation of the jury trial in its purity. He recalled with glowing pride that during the existence of the court, brief as it had been, "it had done something"—much we would say—"to establish trial by jury on a foundation so broad and deep that it will not be easily shaken." Not an idle boast we gratefully feel as we read again his strong words in *Boon's case*, 1 Kelly, 624, where he deprecates "the continued effort, both on the part of the legislature and of the courts to *warp* (the italics are his) the ancient rules of the law upon this subject." The judge had evidently discovered a bad tendency, and with all his vast power sought to arrest it. And his associates and successors have forcefully seconded these efforts. Their utterances upon this subject would fill volumes. They have neglected no occasion to speak strongly upon

it, and zealous counsel have raised the issues requiring these utterances upon the slightest apparent infringement of their client's rights in this respect. No other right have they guarded so vigilantly and jealously.

Under the captions of juries and jurors and trial by jury, the very pages of a digest of Georgia decisions become fervid. Some of the catchwords almost blaze. A page or two under this caption, read at the tomb of Jeremy Bentham, would make that apostle of "single seated justice" start from the chair where his embalmed body has been seated for a century past.

Most startling to him would be the volley of approvals of trial by jury as it is, not of trial by jury as it was or as it should be, as it would be if certain disciples of his could carry out their ideas of proper reforms. And from the beginning to the end of the reading, he would hear "no such miserable interrogatory as what is all this worth." And how his wonder would grow as he passed from Lumpkin and Nisbet's deliverances upon the subject to the equally strong opinions of their successors, to Bleckley's *dicta* that the "jury are the best doctors of doubt," and that "a verdict is not a mere reflex of what truth there is in the testimony; it is compounded of evidence, law and logic."

But pointed epigram and lofty panegyric would do little towards securing rights unless they embodied or were accompanied by rulings that visited a penalty upon an infraction of the right. Counsel and client in this State have invariably, in the court of last resort, had the benefit of just such rulings where there was ground for complaint that their right to trial by a jury perfectly fair and impartial, by jurors above all exception, had been infringed. This not only means a trial by jurors who stand impartial and "indifferent as they stand unsworn," but by jurors, who, after they are charged with the law and evidence of a case—and in criminal cases from the very moment they are accepted—are quarantined and set apart so that all access to them and communication with them is absolutely prevented. The consideration of a very few cases will show how strictly rules of

practice and regulations, having for their end and purpose the securing of such a jury, have been insisted upon and enforced.

In *Obear v. Gray*, 68 Ga. 187, the jury separated and went to a park. Affidavits to purge were exhibited. "These affidavits," say the court, "show everything necessary to purge except that these jurors did not hear bystanders make remarks about the case." Consequently a new trial was ordered.

In case of *Rainey v. The State*, 100 Ga. 82, a member of the jury was dined free of charge by counsel for the State, and though counsel for defendant knew of this fact before verdict, a judgment refusing new trial was reversed. "A new trial will be granted of course," said the court, and added: "The trial court should not and this court will not inquire whether injury resulted to accused or not, but the verdict, upon principles of sound public policy, will be set aside." The facts, beyond those indicated in the head-note, are not reported.

But in view of the many decisions touching the entertaining of jurors by party or counsel, the trial judge must have based his refusal of new trial upon the ground that opposing counsel, knowing of the incident before verdict, and having elected to take chances of a favorable finding, should be held to have waived all objections.

So reasoned the writer of this paper when, as trial judge, he passed upon a motion for a new trial, based upon the sole ground that the jury had not had the oath administered as prescribed, *Slaughter v. The State*, 100 Ga. 323. Neither the judge nor the solicitor-general had any recollection of the fact. But counsel for defendant made affidavit that the ground was true, for he had noticed particularly that the solicitor-general failed to administer the oath to the jury. The ground was certified with reference to the affidavit. The trial judge held that acquiescence until after verdict, taking chances of a favorable finding, should be considered as waiver of objection. Such seemed to be in effect the ruling in *Smith's case*, 63 Ga. 168. But the Supreme Court distinguished *Smith's case*, and the judgment refusing new

trial was reversed. That decision, while it was fresh, was not altogether palatable. But with the mellowing effects of time it has come to have the most approved flavor.

In Shaw's case, 83 Ga. 99, the bailiff who had the jury in charge evidently attempted to shun the evil examples of the bailiff who had taken the jury to the ice-cream festival, and of the bailiff, in case of *Obear v. Gray*, *supra*, who had taken the jury to the park, and of numerous other bailiffs who had violated the usual instructions as to keeping the jury together, preventing separation, permitting no one to speak to them, keeping them apart from the world, etc. This bailiff in Shaw's case, evidently an officer of pious leanings, having the fear of God and the court's instructions before his eyes, carried his jury to a prayer-meeting, to his mind an unexceptional place. They were courteously received, and by the pastor of the church conducted to a place apart from the rest of the congregation. Their situation in the church separated them from saint and sinner; but alas, the worthy pastor who led the exercises that night had interested himself in the prosecution of the defendant Shaw, and the jury knew it. And while no reference was made to the trial by any one, during the exercises a prayer was offered "for the court and its officers, that they might be guided aright in the discharge of their duties." There was also shouting at this meeting, though whether this shouting had any reference to the presence of a bailiff and a jury at church the record does not disclose. If the recital of the facts of the case suggests any humorous comment, read the opinion of the court as delivered by Chief Justice, then Justice Simmons, and all such suggestions will vanish in a twinkling, as one listens to the stern words that body forth the fixed purpose of the court to preserve, as their predecessors had preserved, jury trial in all its purity. Referring to the misconduct of the jury and the bailiff, the court says, "It was such a gross violation of all order, decorum and decency in the trial of a case involving life and death, that the verdict should be set aside, *whether* the defendant was injured or not."

In Myers' case, 97 Ga. 92, Mr. Justice Atkinson, looking forward as well as backward, prophesied that "the right of trial by jury sacred wherever the common law prevails, though often assailed by persons who little appreciate either its origin or its usefulness in the administration of the law, is an institution so deeply embedded in the civilization of this country, that so long as our institutions of government continue it will not perish from the earth."

Dicta, rulings, and instances from our reports along the same line might be multiplied indefinitely, all tending to demonstrate that the bench and the bar of this State have guarded well the institution of jury trial that comes to us as a sacred heritage.

In the consideration of these same cases, and the numerous citations from other volumes of Georgia Reports, we find a most emphatic answer to the second question, suggested,—“Has the institution fallen from its high estate?” as suggested in more than one able paper by members of this association. And that answer is an unqualified negative.

Certainly not in the opinion of members of the bar who have never failed to resist the slightest attempt to abridge the rights of their clients in any matter of practice or procedure that has for its object the maintenance, unimpaired and inviolate, of trial by jury. Certainly not in the opinion of the present and former members of the Supreme Court, whose decisions demonstrate their reverence for the institution and their determination to preserve it. And I believe this to be true, also, of our trial judges, and that their rulings which have been resisted and reversed as having a tendency to abridge or impair the right of trial by jury, have no doubt been, in nearly every case, the result of the haste with which trial judges are frequently compelled to pass upon questions arising during the progress of causes before them.

If, in the opinion of the public, it has suffered, this is very largely attributable to the adverse criticisms of the press, and if these are closely scrutinized they will be found to have their

origin principally in two causes: First, because the jury fails to ratify many verdicts made by the press in advance of the trial; and, second, it will now and then happen that a cause is not disposed of with that speed which many newspaper writers regard as an essential element of justice, but for which lack of celerity the jury is in no way responsible. In his most admirable address before the American Bar Association, year before last, Mr. Joseph Choate refers to the fact that "one of the formidable charges against trial by jury is to accuse it of a great share in the law's delay," and then proceeds to dispose of the charge as follows: "But I deny the charge absolutely and altogether. There is nothing in the whole realm of litigation so short, sharp and decisive as the ordinary jury trial. From the first moment when the impaneling of the jury begins, down to the last when the verdict is recorded, there is no pause or interruption save such as the natural wants of those concerned for food and rest and sleep require. It would not be possible to devise a mode of trial, which in its actual operation would more absolutely preclude delay. As compared with the abominable system of references, which is the practical substitute for it, a trial by jury is like the lightning's flash."

The third and last question suggested was: Is the institution of jury trial as it exists in our State menaced by dangers against which we can shield it? It seems to me that it is. I shall briefly notice two sources of danger.

As far back as Boon's case, 1 Kelly, 620, Judge Lumpkin observed very forcibly that "in an agricultural community like ours, of sparse population, identical pursuits, equal station, infrequent crime and newspapers scattered far and wide, it has always been found a matter of much delicacy and difficulty to procure a jury unaffected by rumors touching transactions of a criminal nature, upon which they are called to pass; "and these observations are applicable to juries in civil cases where they are of such celebrity as to provoke general discussion." and the observations are as true to-day as they were in 1846, except to a few counties

in which cities have been built up; for though our population has greatly increased, the number of newspapers and newspaper readers have increased in great proportion, and many of our counties have been diminished in size. No State in the Union, Texas, with over four and one-half times our area, alone excepted, has so many counties as Georgia. This fact greatly increases the delicacy and difficulty of the task of securing a perfectly impartial jury. For in a county with only two or three hundred citizens whose names are in the traverse jury-box, how strong becomes the presumption that unscrupulous agents or over-zealous friends will talk to a large per cent. of the entire number, either for the purpose of creating a bias in the mind of the juror, or ascertaining the feelings of the juror towards the parties to a cause, or his opinions of its merits. Given this knowledge of the feelings, or opinions of a number of jurors, even though they are not on the venire for the approaching term of court, and an unscrupulous sheriff has it in his power to make his favor very valuable in a cause of importance.

In a note to Fortescue's *De Laudibus* it is mentioned that "the corruption of sheriffs in composing the panels of jurymen" was a serious impediment to justice in early times. We read of its being common to charge in an attorney's bill *pro amicitia rice-comitis*. It appears from Paston's letter that it was not unusual to procure a King's letter to obtain the sheriff's favor on an approaching trial, the price of which was generally a noble. Mention is there made also to statute 18 Henry VI., C. 14, "for recovering bribes from a sheriff given him to return juries."

But however far below the English sheriff of early times, in matter of rank, wealth, and station, the Georgia sheriff may be, the latter is the former's superior in uprightness of character and in fidelity to the principles of the law whose sworn and true officer he is proud to be considered.

Besides, even where jurors may have formed and expressed an opinion from rumors or newspaper report, we know that, on account of that feeling of responsibility for the correctness and

justice of a verdict which is deeply impressed upon the juror under our system of jury trials, as well from that sense of consideration that comes to the juror chosen, selected, sworn and set apart to try some issue between man and man, or the State and some citizen, the opinion as formed yields to the evidence, and the juror, freed from error into which report had led him, in the light of the law and the evidence, marches straight to the truth.

And so, the danger menacing the institution of jury trial, to which we have just alluded and which, at first blush, seems imminent, is more apparent than real.

And so far as the danger from an unscrupulous sheriff, if such should find his way into office, is concerned, the judge and the members of the bar can do much to render him innocuous. The members of the bar of the county in which he holds office can soon, by determined expression of his unfitness, drive him from that office, and the judge as soon as such officer is suspected, can prevent his summoning tales jurors at will.

Another danger to our system of jury trials, which I trust may, by this Association, be prevented from assuming formidable proportions, springs from the mania for reform which infects many of our ablest and best lawyers.

One set of these reformers would inaugurate a departure from the rule of unanimity in making verdicts. This proposed reform was the chief topic of Mr. Washington Dessau's address as president at the tenth annual meeting of this Association. He dealt with it elaborately and convincingly. In the address of Mr. Choate referred to above, the same proposed change is taken up and vigorously combated. I only hope that other heresies may receive the same handling as they attain growth sufficient to require attention.

Another proposed reform affecting jury trial in this State is more boldly advanced and stoutly maintained by lawyers whose ability and high character we all recognize. This is the repeal of the so-called "dumb act of 1850." In the naming of it, the

hardest blow has been delivered. The act survived the name, and it will survive the less serious but more formal attacks.

I realize that a judge with right to express his opinion on the facts of the case was an element in that trial by jury which received the encomiums quoted from Blackstone and Mr. Choate. And trial by jury, even when so constituted, deserved the tribute paid it, especially as compared with modes of trial previously existing, or any mode of trial proposed as a substitute.

But the jury trial, of which a judge, vested with the right to express his opinion on the facts, is an element, does not measure up to the high ideal of a trial by a jury composed of twelve intelligent and upright men taken from the mass of an enlightened citizenry to which they return as soon as their work of administering justice in some particular case, or cases is discharged, and who are consecrated and set apart from the rest of the world and its disturbing influences, and who, during the progress of the cause, fuse their twelve individualities into one quickened and stimulated intelligence, which, realizing that it is the sole and exclusive judge of the facts of the case, grapples every particle of testimony as it comes from the witness stand, and holds it, until the judge, at the conclusion of the evidence, gives them the law in charge, which they receive with unquestioning reverence, and which they apply to the evidence with such precision and accuracy as to astound those who regard scholastic learning and a knowledge of formal logic as a prerequisite to the power of sustained, correct and strictly logical reasoning. Of a verdict made by twelve men so selected, consecrated and set apart and so instructed, well might Judge Bleckley affirm, that it was a compound of law, evidence and logic.

A system of jury trials that permits the judge to express his opinion upon the facts, however its advocates may insist that this is altogether different from allowing the court to direct the finding upon issues of fact, unless the jurors come to a demoralizing realization of the judge's fallibility, will become a system for making verdicts by one man instead of twelve. This may be

considered bald assertion, but in this position I am supported by many who favor such a system and those who oppose it. Prof. Robertson of the former class consoles him for the painful shortcomings of jurors with the reflection "that while the jury are in legal theory supposed to be absolute masters of questions of fact, in practice, they are largely controlled by the judge."

That rarely gifted jurist and thinker, Judge Nisbet, declared, in delivering the opinion in Anderson's case, 2 Kelly 380, that "such is the reverence of our people for the courts of justice, and so profound is their respect for the law as administered to them by the court, that, in my judgment, the opinion merely on the facts of the incumbent who has the confidence of the juries would in nine case in ten control their verdicts." In *Holder v. The State*, 5 Ga. 442, he repeats his conviction and says, "In practice it controls the verdict in nine cases in ten. It therefore defeats the right of trial by jury as guaranteed by the Constitution."

Believing that this proposed reform is a constant menace to an institution, sacred and of vital importance, I have raised my feeble protest and sought to strengthen it by the sanction of great names.

If I err, I do not walk alone in darkness.

If I am sometimes abashed by the smile of those who "sit in the seat of the scornful," my soul is strengthened and my faith is restored by the words of the great jurist, who for years, both before and after 1850, adorned the bench of our supreme court, uttered with the solemnity of profound conviction, long after the passing of the so-called "Dumb Act," declaring that "to the credit of juries it may be said that they are *always* right on questions of liberty and public right." And if in such weighty matters as these they are always right, who would deny their capacity and disposition to dispense justice, pure and undefiled, in causes of less importance, involving only the matter of dollars, dimes and cents.

APPENDIX N.

THE BIOLOGICAL LAW OF INFANCY.

ADDRESS BY WALTER B. HILL, LL.D., CHANCELLOR OF THE UNIVERSITY OF GEORGIA.

MR. PRESIDENT AND GENTLEMEN:—The invitation of the Executive Committee to address you at this meeting found me in a mood of willingness to respond, and yet of consciousness that the first year of my transfer from legal to educational work would be a very busy year, and so I accepted the invitation upon the express condition that the contribution expected from me should be a very modest and informal one. This is stated, not by way of apology, but merely of explanation. This brief and unpretentious paper is not the measure of my wishes, but only of my opportunity and of my engagement with the committee.

THE BIOLOGICAL LAW OF INFANCY.

It would be surprising if my work in the University had not given me new points of view relative to some of the principles which I had so long studied as a lawyer. I invite your attention briefly to the Law of Infancy—as seen in parallax from my former station in the legal profession and my present view-point in education.

If you will place a drop of impure water under the microscope you will see an enormous multiplication of life going on. The tiny creatures swimming about in the liquid seem to divide as you look—one cell becoming two cells—and the two seem to be so near the same in size and activity that you do not know which is the original and which is the derivative. The new-born creatures seem adapted from the moment of their origin to live and move and have their being in as complete a fashion as during their later and brief existence. This is Infancy at the lowest scale of life.

At the opposite end of the scale stands man—the crown and climax of creation. The child has an extended history as an embryo in which he repeats the story of, age-long evolutions; he comes into the world the most helpless of all creatures—the only creature born so helpless and so undeveloped that without fostering care he has not even the possibility of continued life; and he enters upon a period of growth which requires a longer time than is required of any other creature to fit him into the environment on which he has entered. This is Infancy at the highest scale of life.

Between these two extremes is the sum total of animate existence, extending from the most simple to the most complex types. Throughout the whole scale of being the same law holds good which is suggested by contrasting the two extremes, viz.: that the period of immaturity, and therefore of development, within which the creature progressively becomes adapted to its surroundings and fitted to discharge its functions and live its life, is directly proportionate to the complexity of the organism. This is the biological law of Infancy, admirably formulated in the writings of Mr. John Fiske. I wish you to-day to consider that law in its connection with the familiar professional conceptions that would come into your mind if you saw in a law book or a decision that phrase—"the law of Infancy."

MEANING OF INFANCY IN EDUCATION.

It has been said by high authority in the world of education that "the meaning of the period of helplessness, or infancy, lies at the bottom of any scientific and philosophical understanding of the part played by education in human life. Infancy is a period of plasticity: it is a period of adjustment: it is a period of fitting the organism to its environment. This fitting of the organism to its environment on the larger and broader scale is the field of education. . . . The child reaches its physical adolescence by the age of fifteen years. By that time it has learned to enter physically upon its sphere of activity; but there yet remains to be accomplished an adjustment to the spiritual

sphere—the building of harmonious and reciprocal relations with those great acquisitions of the race that constitute civilization. . . . Our art, our science, our literature, our institutions and our religious life are an integral part, indeed an essential part of our environment. They are the great spiritual possessions of the race. Education is the adjustment of the self-acting organism to this vast series of hereditary acquisitions.”

LEGAL RULE OF INFANCY—ITS SIGNIFICANCE.

Now the precise point to which I have been leading up is this: The law which we revere as the perfection of reason has entered up its judgment on the subject of the proper length of this period of immaturity, of disability, and of preparation for life, and has fixed the period of infancy at twenty-one years. This is the crystallized common sense of that system which is the greatest monument of the progressive wisdom of mankind—the common law—that the child, the youth, the young man, if you will so call him, belongs to the family and the school and the college up to his legal majority: and that the preceding period is properly devoted to his preparation to enter as a worker in the business of the world and as a citizen into the State. It follows from this that every boy who through the accidents or misfortunes of life or through the unwisdom or parsimony of his parents or his own undue eagerness, is thrust or thrusts himself into life without having his period of legal immaturity spent in preparation—in education—is defrauded of his birthright: is cheated out of a great privilege which the wisdom of the common law itself has pointed out as appropriately filling the first twenty-one years of life.

INFLUENCE OF THE BAR ON PUBLIC OPINION.

Now, why do I come to you, brethren of the bar, with this plea for the recognition of the law of Infancy? It is because I appreciate your unique influence in the State. When I was one of the guild, I realized the fact of the preeminence of the bar as a factor in the formation of public opinion; but I could

not rid my mind wholly of the suspicion that perhaps the natural tendency of every craft to cry out, "Great is Diana of the Ephesians," caused me to overestimate the power of the lawyer in the community. But I declare to you to-day, occupying a point of view from which no prepossession can be supposed to deflect my judgment, that this public influence of the bar seems larger to my receding gaze than when I stood in closer range. In your professional work and in the exercise of the trust which the community by general consent confides to you, public and private relations are inextricably blended. When you appear for a defendant in a criminal case, you represent him as his personal advocate, but you also appear for every man who may ever have a case, for in the conduct of the one cause you are settling principles that will govern all other like causes that may arise in the future. When in a civil cause you act as the private counsel of a party who seeks the assertion of a right or the redress of an injury, you appear not only for him but for all the possible plaintiffs or defendants in the generation now living or the generations to come, whose rights may be affected either by the rules of substantive law or of procedure that may be determined in the particular case. One of your former presidents delivered before this Association an address to which he gave the significant title, "Lawyers, the Trustees of Public Opinion," and no one who heard it or who will hereafter read it can fail to see that the array of facts which the address sets forth makes good the strong claim for professional influence which the statement of the subject implies. The common speech of mankind, even some of its proverbs, the literature of the world, the jests that pass current on men's lips, often give to the lawyers a bad name; but surely you are justified in complete unconcern for these harmless shafts, since the same world which originates and retails these gibes and sneers goes on day by day contradicting its own words by the conduct that speaks louder and more sincerely than words—the conduct of actually confiding to members of the bar the highest trusts in the State,

and not infrequently in the Church. You have your private clients, but you are all under retainer for that larger clientele—the community. In the eloquent words of D'Aguesseau, “You are placed for *the public good* between the throne of justice and the tumult of human passions.” Since the State gives you the commission which makes you priests of justice—“justice, the highest interest of man on earth”—you owe to the State at large in solemn trust the duty of exercising for the public welfare the masterful influence with which the State's commission clothes you in the formation of opinion and the direction of the communal life.

THE MODERN SOURCE OF MASTERY.

With the thought of this responsibility immanent in your minds, look into the great world of modern civilization for the secrets of power. Nay, not for secrets; for its sources of power are on the surface. He who runs may read. It is not more certain that there was a time when force ruled the world than that a time now is when intelligence rules and when Education gives mastery. One can not often be safely dogmatic in the expression of opinion; but surely it may be announced as incontestable fact that the future belongs to the educated nation among the nations, to the educated section among unequal sections, to the educated man in competition with his fellow-men.

HOW IS IT IN GEORGIA?

In the light of these indisputable truths, have we much cause for self-congratulation when we look at our immediate relations to the source of modern mastery? Northern and western colleges and universities reckon endowments by the million and exceed even on that basis of computation the number of our ten-thousands. The Harvard Corporation has recently donated in a splendid gift to the teachers of Cuba, to defray their expenses in attendance upon the summer session of the college, seventy thousand dollars—a single gift equal in amount to the entire aggregate expenditure of Mercer University, Emory College and the

University of Georgia for a whole year. One institution at Atlanta for the education of the negro has an endowment, I am informed, which exceeds the aggregate endowment of the three institutions just named. These comparisons are not made in the spirit which would reverse the conditions of inequality by tearing down the one, but only in the spirit which would rejoice in the upbuilding of the other at the same time. I would not be understood as implying that the question of inequality is one to be determined solely by the footings of dollars. There is a point both in the individual enjoyment of wealth and in the collective use of it where the mere amount of money ceases to count. It does not follow that our institutions of higher learning will be permanently inferior to those of other sections unless and until our endowments equal theirs. All that we ask is equipment to the point of adequacy; a point which the most buoyant optimism can not claim that we have reached, but which is within the reach even of our comparative poverty.

Follow the broad outlook into world-conditions with a glance nearer home. If the common law—"than which," said Sir William Jones, "no man should consider himself wiser"—has fixed the period of legal infancy and of preparation for entrance upon life—what proportion of the young men of your acquaintance are receiving the full benefit of this period of tutelage and training? Are not ninety-nine of every hundred—some because of "those twin jailers of the human heart, poverty and misfortune," and more because of false commercial notions hurrying them into active business—deprived of that best equipment for the work of life, which wisely taken would enable them easily to pass beyond the possibilities open to earlier but ill-prepared entrance upon a career? In your capacity as advisers of the public, in your capacity of molders of public opinion and guides to public conduct, I appeal to you for your voice and your influence against the injustice of those conditions which deprive the young men of our country of their birthright under the law of infancy and against the mistake of selling that birthright for

a mess of pottage. Array against such injustice and such error your own and other men's reverence for law, the consolidation of common sense and right reason embodied in that principle of the Anglo-Saxon heritage of the common law which sets apart the first twenty-one years of life as a period of disability and incapacity for entrance upon life's environment, and therefore for the fitting of the individual for that entrance by the time of his legal qualification.

VALUE OF UNIVERSITY EDUCATION.

But one may say that educational preparation during that entire period does not "pay." Indeed a self-made man; illustrating unconsciously the dangerous tendency of the self-made man to "worship his maker," illustrating also the dangerous tendency of the uneducated man to draw wide conclusions from narrow premises, has boldly defended the proposition that collegiate preparation does not count as a factor in the problem of success in life. I accept the challenge, and since mere assertion on either side would only signify one's prepossession on the question, I appeal to the facts as they are exhibited in biography. For these data I am mainly indebted to the research of President Thwing, in his work entitled, "American Colleges." For the sake of brevity I present them in a tabulated form, so far as the facts admit of that mode of statement.

- 27 signers of the Declaration of Independence, college graduates; total number, 56.
- 29 members of the Constitutional Convention, college graduates; total number, 55.
- 750 members of Congress, graduates; total, 4,800 up to 1878.
- 21 speakers of the House of Representatives, graduates; total, 32.
- 350 senators, graduates; total, 770.
- 23 secretaries of State, graduates; total, 36.
- Associate Justices of the Supreme Court, over two-thirds college graduates.

Chief Justices of the Supreme Court, all graduates except John Marshall, who was at William and Mary College at the time of the Revolution.

Presidents of the United States, all graduates between Washington and Jackson.

In addition to the above figures showing the chances of distinction, 5,326 men out of 15,149 in Appleton's Encyclopedia of American Biography are graduates.

941 of the same had academic training.

One college graduate for every 40 graduates has reached distinction, while the proportion in those not college graduates is one out of every 10,000.

These figures taken collectively show that the chances in favor of the college graduate are 250 to 1.

Of course these figures can not be misinterpreted to mean that no man deserves to be called educated unless he has received collegiate training, nor that such training is indispensable to a successful career. But they are certainly sufficient to dispose of Mr. Huntington's fallacies and to show--this being all that is claimed for them--that broadly speaking, college education gives its possessor an enormous advantage over his untrained competitors in the race of life.

MERCER, EMORY AND THE STATE UNIVERSITY.

In all that I have said, I have not implied the advocacy of any special interest. Of the three Presidents of Georgia colleges and universities, I alone would have access, by the chance of having been a lawyer and being still a teacher in a law school, to the sources of influence which center here; but I should deserve my own contempt and your disapproval if I uttered one word of special advocacy. The truth is that Church and State may alike be proud of the honorable record and work of Georgia's three institutions of higher learning. To put it otherwise, the church may well rejoice in a State University which, along with great names in statesmanship like Cobb, Toombs,

Hill and Stephens, has contributed to Methodism her George F. Pierce; to the Baptists their J. L. M. Curry and Nathaniel M. Crawford; to Presbyterians their Benjamin M. Palmer; to Episcopalians their Bishops Scott and Weed; while the State may well rejoice in a Church College like Mercer which, along with great names in the ministry, has contributed to political life Hubbard of Texas, to education Noah K. Davis, now of the University of Virginia; and the State may equally rejoice in a Church College like Emory which, along with eminent clergymen and bishops in its own denomination, has contributed to statesmanship L. Q. C. Lamar.

CENTENNIAL OF THE UNIVERSITY.

These three institutions stand in generous rivalry, not in antagonism, for I believe that each realizes now, whatever it may have thought in the past, that the interest of one is the interest of all. I gladly join my voice and prayers and contributions for the utmost success of the great church movements now going on for the endowment of their colleges. I know that their success would stimulate a deeper sense of the responsibility and duty of the State. And I feel assured that representatives of these church movements feel that a large policy of liberality on the part of the State to her own University would send a quickening impulse all through the ranks of generous men in these great denominations. For this reason I have faith that in the campaign which the friends of the University will inaugurate during its centennial year now just begun, in which an appeal will be made to its Alumni to testify to their personal love for their Alma Mater, and in which the State will be asked to make recognition of what the University in its first hundred years has done for the Commonwealth in furnishing its splendid sons for its bench and bar, its pulpit, its legislature, in Congress and Senate, in the fields of war and in the fields of peace, we shall be supported by the sympathy and cheered by the God-speed of the friends of church education over all the wide area peopled by the great-hearted and broad-minded men of Georgia.

APPENDIX O.

REPORT OF COMMITTEE ON MEMORIALS.

To the Georgia Bar Association:

Your Committee on Memorials beg to say that while the number of losses by death among your members since its last meeting has not been great in number, yet the four deceased members who have met death since your last annual meeting, namely: Honorable Clifford Anderson of Macon, ex-Governor W. Y. Atkinson of Newnan, Colonel Cary J. Thornton of Columbus, and S. N. Woodward, Esq., of Barnesville, represent not only a considerable loss to this Association, but to the immediate communities in which each of them resided, and to the State at large.

Exact biographies of these gentlemen will not be written by your committee. Full memorials of each of them have been entered of record in the courts wherein each of them had largely performed his life-work, but this committee will rather content itself with endeavoring to place upon record simply an affectionate tribute to our deceased brethren.

Honorable Clifford Anderson was your president during the term of 1886-87, and during his long life had been almost constantly in the full light of public observation. He had served a very large clientage with great credit to himself and with devotion and zeal, and had occupied offices of great dignity and importance, and stood high both in the councils of his State and of his political associates. His high-mindedness, his great learning, his strong convictions of and his devotion to principle, made his career a marked one, and at the close of his long life he passed away leaving behind him an enviable record and a name and reputation without a scar or blemish.

Of the Honorable W. Y. Atkinson, it may be said that while

an accomplished lawyer and a successful one, his talents were for and his tastes inclined to political fields rather than the courts of law. In the latter he attained a satisfactory degree of success, while in the other as a leader of his party, as legislator and as governor, much greater fame was reached by him than is often had by men who have scarcely come to the prime of life, and before that time he had imprinted upon the civil and political history of his State much that was forceful and wise and of benefit to his people. It seemed that his career had scarcely begun and that the future promised him still more when his untimely death occurred.

Both these gentlemen were the architects of their own fortunes, and each wrung success, not by reason of inheritance or surroundings, from reluctant fate, but by persistent endeavor, and although each of them reached high station, yet, their lives were not untroubled, and each suffered and endured before death came. Of each of them this may be said:

“ He has done the work of a true man,
Crown him, honor him—love him ;
Weep over him tears of woman,
Stoop manliest brows above him.”

Messrs. Cary J. Thornton and S. N. Woodward moved not in so wide a circle, and were perhaps known to a smaller constituency, but they were none the less tried, trusted and worthy lawyers and citizens, and each filled his place with credit to himself, and contributed to the upbuilding of those things which are to be desired and to the making of good citizenship. It is not alone the officers and the leaders who stand in the full light of glory who make the greatness of a people and nation, but these things are made possible by the solid and worthy yeomanry and the earnest workers who stand out less prominent before the public gaze, but fight its battles, win its victories and make its best history.

While not eminent, these two gentlemen impressed themselves forcibly upon and were prominent among the people to

whom they were best known, and while their lives are closed and their records made up, and while it is not given to any man to be faultless, there is no dissenting voice, but the verdict is written, that in each of them the bar has lost a worthy member, his community a valuable citizen, and the State a good man.

In the death of these four brethren, Messrs. Anderson and Thornton were almost landmarks, representing one generation, the members of which are passing rapidly away, and of whom but few now remain, while the other two are of a later generation; but that distinction has no effect, for each generation in Georgia has furnished citizens who have contributed, and each generation continues to furnish, those whose lives are devoted to the upbuilding of the Empire State, who illustrate her in her courts and in her government, and in each department of life, and have made and make her history a worthy and a brilliant one, and we can but regret the loss to the State of such men, even though we know that such a result is inevitable and the common fate of all mankind, but with that regret and with that knowledge, let us find some relief in remembering that though they may be

“ Under the storm and cloud to-day,
And to-day the hard peril and pain—
To-morrow the stone shall be rolled away,
For the sunshine shall follow the rain.”

BOLLING WHITFIELD, Chairman.

July 4th, 1900.

APPENDIX P.

THE LAW OF PRIMITIVE PEOPLE.

ADDRESS BY WILLIAM WIRT HOWE OF NEW ORLEANS, LA., BEFORE
THE GEORGIA BAR ASSOCIATION, JULY 5, 1900, WARM SPRINGS, GA.

In undertaking to say something here concerning the law of primitive people, I am reminded of a remark I once heard made by your Chief Justice Bleckley, to the effect that among the important rights of the individual man was "the right not to be bored." In treating my theme, I must not forget this very sacred right, and must begin by a large process of elimination.

We need not dwell, then, on the origin of man, or the many theories of ethnology respecting all the different races of the earth. Nor need we consider the customary law of all the different primitive peoples, interesting as such an inquiry might be. We may properly confine our attention briefly to what we call the Aryan race, from whom we are, most of us, descended; illustrating the subject, however, by examples from the social life of the Semitic people, and especially the Hebrews, many of whose juristic ideas were quite similar to those of what we call the Aryan, or Indo-European or Indo-Germanic race. And, in doing so, we may follow the modern historical methods, considering the development of law as a part of the evolution of humanity and hoping that our labor may not be in vain.

For, as the bishop of Oxford says in his work on the English Constitution,—“The history of all institutions has a deep and an abiding interest to those who have the courage to work upon it. It presents in every branch a regularly developed series of causes and consequences and abounds in examples of that continuity of life, the realization of which is necessary to give the reader a personal hold on the past and a right judgment of

the present. For the roots of the present lie deep in the past, and nothing in the past is dead to the man who would learn how the present came to be what it is."

Now, what is this Law of Primitive People among our Aryan ancestors which we wish to consider to-day? There have been many disputes and theories about its nature and development, and perhaps what I may venture to say will be merely provisional; but so far as we can judge, in the light of present research, it began with certain customary observances, whose meaning and effect we are to note and if possible to understand.

Following the views of such writers as Paulsen of Berlin, we may agree that this law was not an invention of jurists and legislators, but it grew with the social life of the people as the external form of their union. In the beginning, it was simply custom. Then, at a certain stage of development, it grew apart, and became separated from the collection of universally obligatory forms of life and action and became a separate field of social compulsion. From that stage on, it became an object of conscious consideration; and so, by the side of unwritten law, written law arose, so that at the last in the great codifications law looks like an artificial product. But if we look at the subject historically, we will easily observe that "the body of the law," the legal system as a whole, is not made. All that is done in such cases essentially, is to incorporate in a system what is current and traditional. Occasional slight adaptation, to the changing life conditions of a people are made. And so we say of the legal codes, what we may also say of our organic laws—they are not made—they grew.

And it may be fairly said that this growth resembles the evolution which is observed in other departments of human progress; so that we may often notice in legal history a struggle for existence, a survival of the fittest, a variation in conformity to environment.

The dawn appeared in the east. We may believe that our Aryan ancestors came from the table-lands of Asia. Some went

to India and Persia, some to Europe. It is likely that we do not go wrong, therefore, if we call them Indo-European or Indo-Germanic people. Even before the separation of the different stocks, they were not mere savages. The remains of their language show that they not only led a pastoral, but to some degree an agricultural life, and that they had developed certain primitive institutions which rise to the dignity of at least customary law; and these institutions are to some extent described in, or may be read between the lines of, such writings as the Sacred Books of the East, the Poems of Homer, the remains of Archaic Greek, Roman, and Germanic law; and are indicated in similar ways among Semitic people in the remarkable collection of religious writings we call the Bible.

And in order to make a convenient and logical division of our topic, we may refer to the writings of one of those classical jurists whose works are still to some degree extant. Gaius, who is believed to have been a law professor of the second century, living on the border-land between Aryan and Semitic people, divides all jurisprudence into three categories; first, the Law of Persons, whether natural or artificial, who may have certain rights; second, the Law of Things or Property, concerning which persons may have such rights; and third, the Law of Actions or procedure of some sort by which the rights of Persons to Things may be vindicated or enforced. This ancient division has been found logical enough to be followed ever since; and the Institutes of Justinian, the Codes of Italy, France, and Spain, the Code of Louisiana, and the Commentaries of Blackstone and Kent are arranged in the same general way. In speaking, then, of the law of primitive people, we might follow the same general arrangement, saying something first of the Law of Persons, second, of the Law of Property, and third, of the Law of Procedure.

And in the first place, let it be remembered that in primitive times religion and law were not distinguished; and the reason for this becomes plain when we go back to some period prior to

the existence of anything like what we call the State and prior to the time when the sanctions of what we call law to-day were entirely unknown. Doing this, we find the primitive household united in ancestral worship. The household consisted not only of those who were living in their present relations, but of those who had gone before. The dead were supposed to still exist in a kind of spiritual or ghostly way and in a kind of underworld. They abode near or about their tombs, which were in or near the dwelling; and down to a comparatively recent period these tombs were in the eye of the law "religious places" dedicated, as Gaius says in his Commentaries, to the gods of the under world. It may be interesting to note that as late as the year 1847 in a Louisiana case (*Ternant v. Boudreaux*, 6 Robinson, 488), the question was discussed whether this idea of Roman Law still prevailed in Louisiana, and it was held that it did not.

It was very important, therefore, in the view of primitive people that the dead should be properly laid in a decent tomb, often in the house itself or connected with it, and that offerings of food and libations of drink should be made to them. Otherwise, they would be restless and unhappy and would wander and complain. So around these tombs, there grew up a certain mass of customary observances which was felt to be binding as a kind of law. The dead ancestor still lived as an object of reverence and an object of care.

The Homeric poems abound with illustrations of the reverence paid to ancestors and so do the Hebrew Scriptures. As late as the third century before Christ, Leonidas of Tarentum wrote a little idyl which has been paraphrased by Mr. Alfred Austin in this way:

"And when I shall no more hear
Grasshopper or chanticleer,
Strew green bay and yellow broom
On the silence of my tomb;
And still giving as you gave,
Milk a she-goat at my grave,
For though life and joy be fled
Dear are love-gifts to the dead."

To this may be added the custom of the Sacred Fire, which we find among all these primitive people. Around the domestic hearth there likewise grew up a kind of body of customary doctrine, partly religious and partly legal, as to this Fire, and its consecrated character. It was not a mere convenience. It assumed a sacred significance and became an object of reverence. No impropriety was to be committed in its presence, nothing indecent or unclean. And so the domestic hearth became a domestic altar, as to which there were rules which may be considered as a kind of law.

To these may be added the custom of the Common Meal. This was not only an occasion for satisfying hunger and thirst, but it represented a communion between the living and the dead. Offerings of food and libations of wine were made to the house spirits. They were supposed to be gratified by the sweet savor of these offerings, and the offerings were made with reverential ceremony. I understand that some people to-day ridicule the idea of saying grace before a meal, especially when, as often happens, the person who says it has no special religious convictions. It is probably a custom that has come down from the remotest times, when perhaps on the pastoral plains of Asia a family never sat down to a meal in the presence of the domestic hearth until the House Father had made a prayer and an offering of bread and wine to his ancestral gods.

And so around the ancestral tomb and the consecrated hearth and the communion of the common meal, there grew up the primitive family, the unit of social life and civilization, and the first prominent object in the law of persons—an institution that can only be understood by remembering how it was held together by these customary observances.

You will remember that the idea of worshipping ancestral spirits led to the making of images which were supposed to represent such household gods. These little images seem to have been a part of the family possessions among primitive peo-

ple and to have had great value. Thus, we are told in the book called Genesis, that when Jacob, with his family, left the house of his father-in-law Laban, Rachel carried off some of these images belonging to her father and sought to keep them. She probably hoped in this way to acquire some rights of family worship, to which she attached great importance. Other indications of the same kind are found in a much later period of Hebrew history.

In the books of Judges, Samuel, Kings, Zechariah, and Ezekiel, these images, called teraphim, are alluded to, and the most persistent efforts in behalf of monotheism could not quite prevent their use.

The same custom was found among our Aryan ancestors, and from the earliest to the latest times, the images or household gods in Rome, for example, were the object of great reverence. As late as the time of Horace, we find frequent allusions to them in literature, as in his beautiful ode to Phidyle, that little maid whom he celebrates, and whom he represents as crowning with merely simple flowers her tiny gods of hearth and home. And he adds what might be paraphrased as follows:

"The shy penates saw well pleased
Her hands so fair, her honest eyes,
Nor asked from her the splendid smoke
Of altars red with sacrifice."

These little gods were known in Russia, in Germany, in Scotland and Ireland. They were the Little People, the Brownies, the Hobgoblins; frowned upon by the Church, somewhat reduced in circumstances, but still secretly cherished and believed to be ready to help those who were kind to them. It is quite possible that the word hobgoblin meant at first, a genial little family god of the Hob, or that part of the hearth on which the kettle rested.

And as these house-spirits seem to have been among the earliest objects of reverence, so they endured in one form or

other down to a very late period. Not only was there in Israel a constant struggle to prevent their worship, but we find the same trouble in early Christianity. A century after Christianity had become the established religion of the Empire, Theodosius found it necessary to prohibit the worship of these household gods. It is believed that All Saints' Day has really been founded upon this idea and allowed by the church as a kind of compromise, a theory that leads Dr. Hearn to say (*Aryan Household*, page 62): "Thus every Parsee who still makes, after the manner of his fathers, the yearly feast, and offers the usual clothing for the souls of the departed; every Spaniard, who, on the anniversary of his bereavement, brings to the tomb of the lost one his offering of bread and wine; every Parisian, who, with loving hand, lays upon the grave the garland of immortelles—unconsciously continues the tradition of the times when Zeus, and Jupiter, and Indra were not; but when, on the plains of Bokhara, or on the rich pastures of high Pamir, the common progenitors of our race did homage to the dwellers in the spirit-world, and, above all, offered their daily orisons to their own forefathers upon the holy hearth."

We have drifted far away from the ideas of primitive people in these matters, and perhaps do not remember and reverence our ancestors as much as we might. Yet from the point of view of modern physiology and philosophy, they may still abide with us in curious ways; and we may agree that there is truth as well as poetry in what Maeterlinck, the latest of modern mystics, is trying to express when he says:

"And further, we know that the dead do not die. We know that they are to be found in the houses, the habits of us all; that there is not a gesture, a thought, a sin, a tear, an atom of acquired consciousness that is lost in the depths of the earth; and that in the most insignificant of our acts, our ancestors arise, not in their tombs, where they move not, but in ourselves. where they always live."*

**The Treasures of the Humble*, p. 141.

Pursuing the subject of the primitive family, we need not dwell on that form of relationship which, among some races, has been calculated only through the female line. The primitive race with whom we are dealing had as a rule the institution we know as the Agnatic Family, that is to say, a group in which kinship was reckoned only through the male line. This word family had a wider meaning than it has to-day with us, and signified not only the group of Agnates related through the male line and living under the paternal authority, but also the rights and property of the group. At the head of this family was the House Father with that paternal power which is such a prominent feature in ancient law. The House Father was in relation to the group at once prophet, priest, and king. As prophet, he was a teacher who preserved and handed down the results of observation and experience; as priest he conducted the family worship; as king he was the sovereign of the group.

And in order to understand the essentials of the primitive family or household, its organism as a kind of corporate body must be remembered. The House Father was indeed head and master, and as such held a kind of office, but all the members of the group were interested and had their rights, as we shall see when we come to the subject of property in early law.

So also, we find very early glimpses of the Family Council, or Family Meeting, which has come down to us through Rome, France, and Spain, and which was probably based in its origin on the idea that the family was a kind of body corporate, and in certain emergencies the members, or what we might call the incorporators, should be consulted. Three or four years ago, we might have thought that the origin of the family meeting was something possessing little interest, but to-day some thirteen millions of people subject, more or less, to the dominion of the United States possess this institution as a part of their municipal law. It exists in Louisiana, Porto Rico, Cuba, and the Philippines.

The Civil Code of Spain of 1889, which is the foundation of private law in civil matters in our new possessions, contains minute provisions in regard to the family council, constituted for the purpose of taking care of the person and property of minors or incapacitated persons, to watch over the procedure of the guardians and generally to advise and assist the court in the administration.

This family meeting is an interesting survival and descendant of an institution found among all primitive Aryan people. As a rule, almost without exception, the number of this council is the same, that is five. Some have thought that this number might have been suggested by that primitive numeration of the fingers of the hand that has left so strong a trace upon the history of mankind in other matters, as in mathematics, weights, and measures. We are told that family councils existed among primitive people in India, Persia, Greece, Gaul, and Ireland. Some have thought that the Reeve and four men, or five in all, who governed the early English township represented an idea of the same kind. In early Roman history, the family meeting played a great part. The struggle for existence was very severe, and the custom of exposing children because there was no means for their support prevailed in very early times in Rome as it did among many other primitive people, and the rule was that a father could not thus expose a son or eldest daughter except on the advice of a family meeting.

We see at once also why the paternal power, extending as we are told, even to life and death, which has seemed to some such a strange institution, was logical enough in archaic times. It was simply the sovereignty over the family group relating back to a time when this group was like a little commonwealth and the power of life and death resided in the sovereign head, the *Pater Familias*. Such a power must reside somewhere.

It was a power that prevailed among many primitive people of Semitic as well as of Aryan descent. When Abraham pro-

posed to slay his son Isaac, he was probably exercising this power, and we are told that he was interrupted by a suggestion of divine origin. Among the legends of Greece, we have the story of Iphigenia embodying the same idea. Her father, Agamemnon, was about to offer her up as a sacrifice to appease the divinities of wind and wave when she was rescued and carried away by a benevolent goddess. Gaius, in his Commentaries (1-55), remarks upon the extent and vigor of this paternal power among the Roman people, yet he notices also that the people of Galatia had an institution of the same general kind. This institution was referred to by St. Paul in his Epistle to the Galatians (Chap. 4), where he uses it as an illustration, saying, "that the heir as long as he is a child differeth nothing from a servant," being like a servant or slave in the power of the House Father.

The Galatians, as you know, were a Celtic people who had come down into Asia from the neighborhood of the Danube, and without doubt brought this custom with them.

The House Mother also was a prominent figure in primitive life. She naturally had important duties to discharge in the domestic sphere, and one of these duties was to guard and maintain the fire on the domestic hearth. She thus became in a way a kind of priestess, though not in her own right; and when we remember the importance attached to her duties, and the large extent also of the paternal power, we may better appreciate the wide meaning of the commandment to honor thy father and thy mother.

. And remembering also the quasi-corporate character of the family and its estate, we can appreciate the intense desire among these primitive people which we find expressed in so many ancient writings that there should be sons to maintain the household, to celebrate its religious rites, and to continue its secular administration; sons who should be received into the family with fit ceremony, and given a name, after having been sprinkled with the holy water of lustration. In the earliest literature of

India, of Palestine, of Greece, and Rome, we find everywhere the expression of this powerful feeling. The Hindu law declared that the perfect man from this point of view consisted of himself, his wife, and his son. The Indian law book, called the Institutes of Manu, sings the praises of the House Mother and seems to lay down the doctrine that it is only by maintaining the family in its integrity that any of its members can attain immortality. It must not be allowed to fail lest those here present and those who had gone before should alike miss the benefit of this associated life. Hence came the desire to have a legitimate son who could maintain the institution and its work as a matter of worship, government, and administration, and hence the various methods originating among these primitive people of perpetuating the family in case the House Mother had no son. For example; the institution of Leviration seems to have been well known among Aryan as well as Semitic people, and is the same alluded to in the gospel of Mark (12: 19), in the problem propounded to Jesus by the Sadducees. If the husband died leaving no son, the widow would marry his brother; and in the problem referred to, the woman had thus married seven brothers in succession. But the principal method of perpetuating the family was by the custom of adoption which we find prevailing among all these early people and regulated by elaborate provisions which indicate its object and show how it was intended to preserve the integrity of the family group so that neither its religious rites nor its secular administration should come to an end.

It may be noted that in the year 1859, after the Sepoy mutiny had been put down and the British government had taken the place of the East India Company, Lord Canning, the governor-general, had occasion to issue a proclamation conceding to the native princes the right of adoption. (Lord Roberts: Forty-one Years in India.)

These things throw a curious light upon what might other-

wise be obscure in early writings. For example, alluding again to the story of Abraham, we catch a glimpse of the difference between Sarah, the House Mother, and her promised son Isaac, on the one hand, and the servant Hagar and her son Ishmael on the other. Abraham dotes on Ishmael, and he prays to the family God, "O that Ishmael might stand before Thee,"—that is, that he might have the status of a real son of the family and perpetuate its worship as well as its affairs. The prayer is denied; Isaac is born and assumes the office; and Ishmael is finally sent away to found a different family.

The primitive family also included in its group many other persons, subject in some way to the power of the House Father. Slaves were numerous and had, no doubt, a certain protection in the fact that they were humble members of the family, and, so to speak, children of an inferior sort. And the stranger within the gates was a frequent figure. If once received, he acquired at least temporary rights. Thus in the *Odyssey** we find Ulysses wrecked on an island and going in his forlorn condition to the house of the prince Alcenous, and seating himself in great humility as a suppliant in the ashes of the hearth. He had no more right there than a hunted deer; but when, on motion of one of the family group, the suppliant was invited to the table, he became for the time being the stranger within the gates, and so long as he abode there had, so to speak, the freedom of the little commonwealth.

As the family multiplied and was subdivided into collateral stocks, there came to be formed what was called the Gens, a group of families claiming Agnatic consanguinity. We may use this word Gens as being perhaps the most accurate, though some writers use the word Clan and others the word Kin. The Gens in turn had its recognized leadership, its common worship of some hero or Eponym who was claimed as ancestral founder, its special religious rites, its jurisdiction over property, and es-

*Book 7, 189.

pecially common concerns and morals. The heads of the families in each Gens were known as the Gentiles in the proper sense of that word.

We are told that patrician Rome in its earliest days was a federation of Gentes. They might be likened to what are sometimes called the great houses in England, such as the house of Howard, the house of Percy, the house of Cavendish. Such little communities were found in the neighborhood of Athens and were eventually united. Tradition says that those which existed around the Tiber were organized into *curiæ*, and these into three tribes.

And next in order of development and regimentation came the Ancient City of which Mr. Fustel de Coulanges has written in such vivid style, and of which Athens and Rome are the most remarkable examples.* The Ancient City was formed by a union of smaller bodies which had grown up from the family. Thus, Sir Henry Maine says that the city of Rome was formed by the union of the village communities that had grown up around the Tiber, communities resembling in many respects those which existed in India, Greece, Germany, and England and still survive in some places down to the present day, notably in Russia, and throw a good deal of light on ancient law in these matters. The Ancient City represented the highest development of government in ancient times. It, too, had its common worship, its sacred fire in *prytaneum* or *vestal temple*, its public property, its customary law whose roots sprang from the institutions of patriarchal times.

And this City-State was something more than a collection of buildings, water-works, and sewers. It was a confederation of all that was most sacred in customary law and religion. It was the household of the tribes. Its members were united to it as children to their mother. Their passionate patriotism taught them to live for it and to die for it. And hence it was

**La Cite Antique*, 17th Ed.

that exile was such a terrible punishment. We can fancy a man banished from Philadelphia to New York and finding some consolation or compensation for such a calamity; but a man who was banished from his city in primitive times was not only cut off from political citizenship but from religious communion. It was not only exile but excommunication.

And as the family, the gens, the curia, the tribe, had each its chief and high priest, so the ancient city had its magistrate, whether king or consul, who exercised sacerdotal as well as political functions.

The *Æneid* of Virgil takes on a new interest in the light of these facts. It is not a mere story of adventure. If it had been, it would probably not have exercised the powerful influence that it did both on classic and medieval times. We read it as boys, and perhaps miss its central point. It is the story of "pious Æneas,"—whose special distinction was that he was "pious"—and driven by divine impulse and steadfast amid the temptations of love and the perils of sea and land, he persevered and fought his good fight until he carried the gods of Troy to Italy and set them up in the shrine of Lavinium.

In view of such a development, we can appreciate the logic of the long and severe struggle between patricians and plebeians. Patricians were not necessarily more wise or more wealthy than the people called plebeians. The fundamental distinction related back to the law of the Agnatic Family. The patricians or *Populus* represented in theory at least the outgrowth of the primitive families. They preserved the family customs; they maintained the religious ceremonies; they claimed for a long time a monopoly of burgess rights, of sacred mysteries, and of the knowledge of customary law.

The Plebs, on the other hand, broadly speaking, included a large and rapidly increasing number of inhabitants who did not at first possess any claim to the peculiar privileges from family descent, real or assumed. Whether they were subjugated peo-

ple, strangers who had come to Rome as immigrants, or dependents who had left their condition of clientage, they belonged to no Gens in the primitive sense, had in theory no share in the religious ceremonies or in the *jus sacrum*; no place in the *comitia* of the burgesses; no share in the executive or legislative government. In the language of the present day, we might call them Outlanders. From this point of view the history of Rome for centuries is a history of the struggle by which the plebeians finally attained a measure of political and social right, and the power of the Clans yielded to the superior authority of the city.

As for artificial or legal persons, we may perceive in primitive law the germs of the modern corporation. We find in India guilds of artisans and societies of tradespeople, whose by-laws had binding force. The same tendency is seen in Greece, where there were friendly societies of many kinds and perhaps traces of what might be called industrial insurance. The stringent character of archaic ideas as to family and clan tended to force into some association the outsiders who had no Gentile rights, and it may well be that the great development of the law of corporations in Roman jurisprudence was promoted and assisted in this way.

Of course, much more might be said about primitive ideas of the law of Persons, including some customary rules concerning husband and wife, parent and child, guardian and ward, master and servant, but, fortunately for you, I am not writing a book, and we may now hasten on to the primitive law of Property.

Much of the primitive law of those things in regard to which persons may have proprietary rights is involved in obscurity and has been the subject of conjecture. There has been much discussion as to whether the idea of individual property or that of common property came first. However this may be, it can safely be affirmed that the sacred character of the household domicile and the ancestral tomb, tended to establish a right of property in such objects, which would soon extend to whatever else was

possessed and used by the family group. Such property would naturally have been acquired by occupancy; and long possession would ripen into something like our modern title by prescription. The physical elements of such property would be simple. It would consist of houses and lands, or the right to occupy certain lands, with their landmarks sacred among all primitive people; slaves wherever slavery prevailed, domestic animals concerned in pastoral or agricultural operations, with implements and arms. These would be the elements of something like a settled and orderly life, as distinguished from the merely vagabond existence of savages.

We, therefore, find in the earliest times much importance attached to these elementary objects of property which were considered so essential to family life. In early Roman law, such things were called *Res Mancipi*, and could only be acquired and alienated, in a contractual way, by various ceremonies which were considered sacramental in their character. Such ceremonies may seem very technical nowadays, but they had at least this meaning, that the property was the property of the family and really constituted a kind of corporate property in which many persons were interested, either immediately or remotely. In relation to this property, the House Father was the only person who, as we might say nowadays, was *sui juris*, all the rest of the group being under his power, tutelage, or guardianship. Whatever they acquired was acquired for him, so long as he occupied his position. We wonder sometimes at the strictness of this rule, for example, in Ancient Rome, and its long persistence, but it may be understood if we remember its origin. The House Father might be compared to the president or managing director of a corporate body. All the property was the property of that body of which he was the head and master. Everything acquired by any member fell into the common fund and was said to be for the father, but, strictly, not for him in his private, but in his representative capacity.

We are told that in India, the House Father might divide:

the estate before his death and, as it were, abdicate his office in whole or in part. And probably the same custom prevailed among Semitic people. This may explain the request of the prodigal son in the parable when he said to his father: "Father, give me the share of goods that cometh to me." Such a request from a son to-day in Georgia would be considered somewhat exorbitant, but the father in the Scripture story does not seem to have been at all surprised. And when the prodigal, having wasted his share in reckless dissipation in a far country, returned home, we are told that the elder brother complained of the reception which was extended to the wanderer. But the House Father replied: "Son, thou art always with me and all that I have is yours," which was strictly true from the point of view of primitive law.

As we have seen, the gens also might have common property, and so eventually might the city. With the formation of the city came the concept so important down to the present day, of the difference between public and private property, and between property in commerce, and which, therefore, might be sold or encumbered in some way, and property out of commerce which could not be so dealt with as a matter of public policy.

One of the most common methods of transmitting property is by succession or devolution in case of death. In primitive law, as will be seen from the foregoing considerations, such devolution would result from the very nature of the family and the clan. The property was quasi-corporate in its character. When the House Father passed away and joined his ancestors in the underworld, his proper Agnatic successor took his place. We can see at once why it has been considered that the right to make a will is not a natural, but a civil right. We are told that in the early Sanscrit language which our progenitors may have spoken before they separated, there was no word signifying a will or testament. The word was not required. The heirs, whether by birth or adoption, were well known. The estate

would be a tangible one requiring no administration. When the House Father passed away, his heirs would succeed to the estate and to all its duties and liabilities, religious or secular. We find the order of succession practically the same in early India as in early Greece and Rome,—first, the son or sons, then the grandson or grandsons, then the Agnatic collaterals called, as we have seen, Gentiles. In this respect, the early law books of the East and the Twelve Tables of Rome agree.

But in time the power to make a will began to be found useful and proper. Wills were well known in Athens in the time of Solon. In the early days of Rome the owner of an estate could only make a testamentary disposition of it with the consent of the community given in the *comitia calata*, and when the Twelve Tables, perhaps in imitation of the laws of Solon, declared that the provisions of a will as to property or guardianship should be the law, they took an important forward step in the process of modifying the old order of clanship and extending the personal liberty of testation under the protection of the higher power of the city.

Yet it was always deemed unwise and undutiful to exercise this testamentary power in such a way as to leave one's family unprovided for. Some interest of the members of the family in the quasi-corporate property was always recognized in some way; and this idea lies at the foundation of the system of forced heirship which is in full vigor to-day in a large part of the civilized world. In France and Spain, for example, and in our new possessions, the children of a testator, or, where there are no children, the parents have a legitimate portion in the estate of which they cannot be deprived by will except under extraordinary circumstances. Thus, the Spanish Code of 1889, in force in Porto Rico, Cuba, and the Philippines, in articles 806-822, describes this legitimate portion, and provides for its ascertainment and enforcement.

Another method of acquiring or alienating property is by the

effect of obligations, and it has been recognized from very early times that obligations may arise either *ex contractu* or *ex delicto*. In the earliest times, individual contracts were very few in number. Such dealings as there were would be more likely to arise between family groups or gentile clans, and resembled negotiations under public rather than under private law; yet in very early times we find allusions to the contract of sale and the contract of exchange.

The contract of pledge also makes its appearance at a very early day and appears to have long antedated the contract of what we would call a mortgage. We find in the Mosaic law a recognition of the fact that pledges were made as security for debt, and there was a prohibition against taking in pledge the domestic millstone which was used for grinding the food of the family; just as to-day, we have in modern states an exemption of tools of trade from seizure for debt, or as in England, in early days, there was the exemption of "wainage."

The early Greeks were a very busy commercial people and very keen in the invention of methods of utilizing credit. They understood the contract of bottomry, as well as those of pledge and mortgage. Many technical words connected with the borrowing of money and securing its repayment in some way are of Greek origin. When men in New England talk about borrowing money and hypothecating something to secure the loan, a very common phrase in that part of the country, they are using a word of Greek origin, the word *hypotheca* being used in Greece and then adopted in Rome to signify such a transaction. So, when to-day we mortgage a piece of real estate to secure a debt, and the debt remains unpaid, it may be collected by what is called in many different countries an hypothecary action. And again, when a piece of real estate is pledged and delivered to the pledgee so that he may hold it as security and apply its revenues to the debt, the contract is still called in some modern countries by its Greek name of *antichresis*.

Having said thus much about Persons and Things, we may devote a few moments to the third division of jurisprudence, which, it will be remembered, relates to Actions or Procedure.

The archaic man knew little of procedure as we are accustomed to understand it. In the first place, it seems to have been very difficult for primitive people to attain to the conception of some outside and higher human power that might be appealed to to arbitrate a dispute. And in the second place, it seems to have been equally difficult to devise some plan by which this outside and higher power might acquire jurisdiction over person or property. We need not wonder, however, at the slow progress that was made in this direction when we remember how our forefathers in England wrestled with the question of compelling an accused person to plead, or compelling a defendant to appear in the Court of Chancery.

In the primitive family, the House Father, with the advice of the family council, could in early times do what was necessary for enforcing the ordinary duties of life, and legal procedure, as we understand it, could hardly exist. Nearly seven centuries before our era, the Horatii had fought with the Curatii and had overcome them. The tragic legend declares that the survivor, Horatius, slew his sister, who had upbraided him for the death of her lover. For this deed, he was brought to trial by the city, but his father protested that he had, as father, investigated the case and exonerated his son from blame. The trial proceeded, however, but, partly perhaps on account of this objection to the jurisdiction, and partly on account of the high reputation of the accused, he was acquitted. The legend may or may not be authentic, but it gives a glimpse of the paternal jurisdiction and possibly of the beginning of the long struggle in which it was eventually to be entirely superseded by the power of the State.

We find in Livy an example of the jurisdiction of the family tribunal on the one hand and of the city on the other. The city, through her judicial power, enforced against the men of Rome

the stringent prohibitions concerning Bacchanalian orgies; but inasmuch as women were not justiciable in the tribunals of the city, they were left to be dealt with by their husbands and fathers under the primitive law of the family tribunal.

As the family groups developed and became associated in the community and the tribe, the elders and chiefs would assume the administration of justice; and in the further course of time, the city formed by the confederation of these larger groups would develop its judicial power.

First came the development of some kind of criminal justice. The most common offenses would be those of violence, such as assault, maiming, homicide, and robbery.

It soon came to be felt that one should not take the law into his own hands by process of self-help, as we might now say, but that some collective power should, if possible, arbitrate between man and man, and even between families and clans. We, therefore, find the idea of composition of the blood feud and of other wrongs, by the payment of certain sums of money, everywhere underlying the beginnings of what we now call criminal procedure, as well as the civil procedure we now have in suits for damages for injury to person and property.

Considerations of this kind may explain the institution known as Cities of Refuge among the Hebrews, the establishment of which, under the Mosaic law, seems to have been a step of distinct progress in this regard. Wilful murder in Israel was punished with death, but for involuntary homicide, there were Cities of Refuge. The unfortunate man who thus sought asylum from the avenger of blood, that is, from some member of the family of the deceased who was pursuing him, was submitted to a judicial investigation, and if the results were favorable, allowed to remain in asylum on certain conditions and for a certain time. His temporary status seems to have been a kind of exile from home as a punishment for carelessness, resulting in death, but without malice.

We find in the Iliad mention of some early forms of procedure. The artist who made the shield of Achilles delineated, among other subjects, a trial scene, which seems to have been a contest over a sum of money put up as a stake to be awarded as damage for the homicide of some important person. And many centuries after, in the Institutes of Gaius, we find that a similar procedure in Rome was developed into an action known as *Sacramentum*, in which each of the parties to the suit, upon stating his case to the magistrate, confirmed his assertions by the solemnity of an oath, at the same time depositing a sum of money to be forfeited as a penalty if he subsequently failed in his suit. Among all primitive people, it is certain that procedure was very technical at the first, and that it was very difficult to change a formula, however arbitrary or inconvenient. Primitive men are like children, and we know that children are very formal and conservative. They do not like a story to be repeated in a manner different from its original version. And so, in procedure, we find strange technicalities in early times and the greatest difficulty in reforming them. Like some organs of the body, they became rudimentary and useless and then troublesome.

Gaius tells us of a suit in early Rome in which the plaintiff claimed damages because his vines had been wrongfully cut by the defendant, and the plaintiff lost his suit because he spoke of *vites* (vines) when he should have said *arbores* (trees), because the Twelve Tables in describing an action of this kind spoke of trees (*de arboribus*) and not of vines.

There is a story told also of a man in Iceland, under the early Scandinavian law, who was so wondrous wise that nobody could sue him, for he alone knew the proper form of words in which a suit could be instituted against him, and of course he would not tell.

The rules of procedure in the Twelve Tables indicate that a person having a claim would meet his supposed debtor in the street, and seizing him would take him before the magistrate.

Probably this was the method among many primitive people. Perhaps in this way the two litigating women came before Solomon with the babe. And in the Sermon on the Mount, the same kind of procedure is alluded to when it is said (Matthew 5:25): "Agree with thine adversary quickly, while thou art in the way with him; lest at any time the adversary deliver thee to the judge, and the judge deliver thee to the officer, and thou be cast into prison."

The gradual change in Roman procedure may be taken as a type of the development and reform of the primitive law of actions, and it may be interesting to notice that the experience of ancient times was very largely repeated in England, where, as we know, procedure began with many technicalities and has been slowly developing in the direction of simplicity.

In the early times of Rome, we find what were called legal actions, which resembled the early forms of common law pleading. In the course of time and under the influence of successive prætors, came the formulary procedure, which might perhaps be likened to the more elastic actions on the case. Under this formulary procedure, the magistrate before whom a case was brought caused a brief statement of it to be made, called a formula, and then sent the cause to a judex or iudices for examination and report. These judices were not what we would call judges, but resembled the modern referee, and in actions of an equitable character might be likened to masters in chancery. After a time, and in the imperial period, this formulary method died out and a still more simple and direct practice was established throughout the empire. In Justinian's time, say, in the sixth century, Roman procedure had become very much like that which we find in admiralty and equity to-day, and in the Codes of Practice of Louisiana, New York, Porto Rico, and the Philippines. The suit was begun by a libel or petition, to which the defendant might reply by exception or answer, and the case would be tried by the court, and appeals might be taken very much as they are taken to-day.

Looking back, we may perhaps draw a line between ancient and modern times. In ancient times, the ceremonial observances of what was called religion were hard to distinguish from the ceremonial observances of what we should call law, and we may perhaps say that modern times began with a full recognition of the distinction between the jurisdiction of Cæsar and the jurisdiction of God; with a full reception of the doctrine that the Kingdom of God is not of this world, and that the power of the State should be confined to the plane of what we know as public and private law; with an enlarged ability, as Milton said to Sir Henry Vane, "To know both spiritual and civil, what each means."

And looking simply from the human and historic side, we may perhaps see one reason why the Christian church, which had so much to do with the development of medieval and modern law, made such rapid progress in the early centuries of our era. I do not refer, of course, to its creeds or its philosophies, but to its organization. The old order was passing away. The ancient household was becoming archaic and out of date. The genealogic clans were yielding to the power of the City-State. The City-State herself was becoming outgrown and unwieldy. And so there came a new household, the household of faith; a new clanship, related not by human birth or by legal adoption, but by what was believed to be a divine paternity—a clanship whose hero and eponym was Christ; and a city, mystic and wonderful, not laid down on any map of Strabo or Pausanias, but seen in apocalyptic vision; whose citizenship was open to all, patrician and plebeian, rich and poor, bond and free; a city of refuge indeed for men of sorrows as well as prosperous folk, for men who had no earthly civic right or power, and for whom the ancient order had no place; a city to which the Outlander was as welcome as the burgher; and whose proclamation in that day of invasion and disaster was: "Come unto me, all ye that labor and are heavy laden, and I will give you rest."

APPENDIX Q.

HUMAN SENIORITY.

ADDRESS BY

EX-CHIEF JUSTICE L. E. BLECKLEY

Of Georgia.

Mr. President, my junior brother, Gentlemen of the Association, my junior brethren, Ladies, always junior, "awful" young—awful to me in the grave literal sense of the term, and not merely in the light feminine sense in which ladies themselves so often use it. Awed and overawed by their beauty and purity, I am afraid to speak in their presence. I am not aware of being deficient in ordinary courage, yet I quail before ladies. Nevertheless, I am perpetually drawn towards them, for never have I seen a real lady without loving her some. Not since I first knew my mother has the shadow of womanhood ceased to hang over and above me. In the days of my youth a Phantom Lady haunted my imagination, and I addressed her thus:

O lady! lady! lady!
Since I see you everywhere,
I know you are a phantom—
A woman of the air;
I know you are ideal,
And, yet, you seem to me
As manifestly real
As anything can be.

O soul-enchancing shadow!
In the day and in the night,
As I gaze upon your beauty,
I tremble with delight.

If men would hear me whisper
How beautiful you seem,
They should slumber while they listen,
And dream it in a dream ;
For nothing so exquisite
Can the waking senses reach ;
Too fair and soft and tender
For the nicest arts of speech.

In a pensive, dreamy silence
I am very often found,
As if listening to a rainbow
Or looking at a sound :
'Tis then I see your beauty
Reflected through my tears,
And I feel that I have loved you
A thousand thousand years.

Passing in speech, though not in thought or feeling, from the ever-living and attractive theme of Woman, I shall endeavor to express myself in sober and sedate prose.

I came to this meeting of the Georgia Bar Association under what you might term a charter of silence, warranted not to break. I was tendered such a charter by the proper authorities of the association, and I accepted it in writing (the tender also was in writing), and I fulfilled the terms on which the charter was granted. I came here and kept to myself as a sort of legal fossil on exhibition in your society museum, and suffered myself to be looked at, gazed at, and distressed by all sorts of compliments and congratulations. But this was not enough. It did not give satisfaction to my creators, the grantors of the charter that created me a corporation. They soon tried to make something more out of me, and set to work to induce me to violate the terms of the charter, or rather to consent to a departure from its terms, and they brought to bear on me forces that really coerced my consent. They exacted that I should speak last night at the banquet, but I wanted to hear the address, the great address, delivered anterior to the banquet by our brother from New Orleans, and I was only induced to agree to break to-day the silence

that we had stipulated should be inviolable, that I might be excused from speaking at the banquet and might hear the delivery of that address. Accordingly I came in last evening and attempted to listen to it, but I went fast asleep because of previous fatigue on exhibition duty, and the last thing I heard was something about hobgoblins. Up to that point the address seemed to me superb, but what it was afterwards I do not personally know, because when it was terminated and you applauded, and disturbed my slumbers suddenly and violently, I waked with a start, astounded to find where I was and what was going on around me. I regret very much that I could not hear this address in full and could not intelligently compliment our friend, its author, upon its excellence; but I expect to read it all and greatly enjoy it when it is published in the minutes.

My negotiations with the representatives of the Association resulted in an understanding that I would deliver some sort of a talk to-day on this subject, "Human Seniority." The subject as well as the speech was matter of contract. Although I might plead duress, I will not take advantage of that plea, and I am now before you to comply with my undertaking. My subject is the one I contracted to discuss, and stated in full is this:

"Human Seniority treated extemporaneously, considered theoretically, and practically illustrated autobiographically."

The autobiographical element brings me into the situation ex-President Grover Cleveland found himself in when he delivered an address at Princeton on the 10th of April last. A man with autobiographical material to discuss necessarily has to speak of himself, and I shall do so. Mr. Cleveland was in the same predicament, and though I was not present I afterwards took down his words. They are so apt and appropriate that I think I may use them even in an extemporaneous address. He said:

"In the recital of events with which I have had to do, I would be glad to speak always in an impersonal way, but I will not agree to be constantly casting about for terms of expression for

that purpose. If therefore in speaking of things done by me and things done to me, I use the pronouns 'I' and 'me,' I hope I may indulge in that easier form of statement, without being accused of egotism."

I am less hopeful than President Cleveland of not being accused, but I do hope if I happen to slaughter anything I ought to spare,—if I slay truth, taste, patience, propriety, or only kill time, you will extend to my extemporaneous talk the same tender, humane compassion which the law extends to extemporaneous homicide, and that your verdict will be one of manslaughter and not of murder. I venture to go further, and indulge a faint hope that under circumstances so well calculated to excite commiseration, you will find that the manslaughter, if any, is not wilful, not voluntary, but involuntary manslaughter committed in the performance of a lawful act, the act of complying with the contract to speak without preparation, which these gentlemen last night extorted from me.

Glancing first at the form of statement in which my subject is presented, I must explain why I am particular to put in human as a prefix to seniority. You may think it strange that this or any qualifying adjective should be deemed necessary. The case is one of latent ambiguity. It so happened that I was born on the third of July, and you know the Declaration of Independence was made on the fourth. Now I don't really at this time of life enter into competition with the United States as to seniority, but I once thought that I was older than the Declaration because my anniversary always came first. I thought as I was born on the third and the Republic was born on the fourth, that I was one day the older. I am not still claiming to be older than the United States. In point of fact the Republic is fifty-one years older than I am, and this concession is covertly made by force of the word "human."

My next duty is to consider seniority theoretically, and this I will do very briefly because there is no biography in theory and I am anxious to get on to where I come in. It is not generally

known, in fact I discovered it only this morning, that psychology reduced to its last analysis is simply the law of primeval partnership. The able address you heard last evening was on the laws of primitive people. Now psychology treats not of primitive peoples nor of modern peoples, but it treats of the primitive individual, and the primitive individual reappears in every human being born in the world. In each individual there is a congenital partnership between the head and the heart. In that partnership the senior partner, the senior member of the firm, is the heart, not the head. All children act from their emotions and not from their reflections. Seniority resides in the emotions, in the feelings, the seat of those forces which first move us to action and from which proceeds conduct not led or guided by thought or reflection. Now comes in the function of education. The reason is not satisfied with Nature's arrangement, which if too long continued would conduct to certain failure. If feeling governed our actions all through our lives, and we were not swayed by reason, we would have to go early into bankruptcy, and remain insolvent. The function of education,—and I am only supplementing the fine address we heard on that subject yesterday,—the function of education is to reverse the relation between these two partners; to set up the head as the leading member and reduce the heart to a subordinate position. Whenever this is accomplished, whenever the sovereignty in the partnership—the chief authority—is transferred from the emotions to the intellect, then education as general training for practical life may stop, but until that takes place education as general training ought to continue. The Chancellor of the University tells us, in point of fact, that it should continue for about twenty-one years.

Glancing for a moment at our legal education and our habits of study after we enter into practice, I venture to suggest that most of us make a great mistake in not giving proper attention to the philosophical elements of the law, and in not prosecuting through life that side of professional study and learning. We become absorbed too exclusively in the particular rules and

practical details of the law, to the neglect of general principles, those broad principles which have their roots in natural and universal law. To be real lawyers and not mere practitioners we must give due attention to these, and not limit our vision to mere municipal law. Seniority in law is with the comprehensive and fundamental.

What I have said is enough, though little enough, to put Seniority before you in the light of theory. I will now show you what it is, and how little it amounts to, in the light of practice.

I was once a junior. I commenced my junior career by being admitted to the bar. A small practice, very small, came to me (I always waited for practice and never went after it), but my location was obscure, shut in by mountains and unfavorable to professional success. Not having the money requisite for procuring a library and setting up in a larger place, I accepted a clerkship in a transportation office. That I held for three years, and was then appointed by Governor Towns one of the Secretaries of the Executive Department, which carried me through another year. In 1852, when I was twenty-five years of age, I opened an office in Atlanta and entered on the practice of law. The next year, at the age of twenty-six, I first became a candidate for office. The office to which I aspired was that of Solicitor-General of the Coweta Circuit, which, as then constituted, embraced eight counties and included the city of Atlanta. The office was believed and reputed to be the best paying office in the State, and so was an object of desire by nine other gentlemen as well as myself. Three of these were so badly beaten in the race that I have forgotten their names. The other six were Daniel, Diamond, Hammond, Hill, Harper and Wright. Wright was the Whig candidate; the rest were all Democrats. The election was by the legislature on joint ballot of the two Houses, and no Whig could be elected, for the Democratic majority was considerable, and there was no lack of organization or of party discipline. Milledgeville was then the

Capital of the State. There members assembled and candidates congregated. I appeared in the multitude, and for a few days walked the streets, frequented the hotels, and put myself on exhibition, much as I have done here for the last day or two. Then I withdrew to my room and waited in seclusion for the election to come off. In the meantime my competitors circulated among the members, solicited votes and electioneered industriously. They were gifted with a capacity for such work, but I was not and I knew it. I might have done as they did if I had known how, but I really did not know and had no disposition to learn. I was anxious to submit to election but not willing to struggle for it.

It was, I believe, in the second week of the session that the election took place in the hall of the House of Representatives. I seated myself in the gallery and calmly looked on. The other candidates were on the floor of the House, surging excitedly among the members, in eager and anxious pursuit of votes.

There was no agent or striker so engaged for me, but I could hear occasionally above the din, the words, "Vote for Bleckley, vote for Bleckley," uttered in quick, sharp tones, that made me thrill all over. This cry came from Bryan, the member from Wayne, of whose zeal in my behalf I had known nothing until it was thus manifested, and who charged about among his fellow members in excited advocacy of my election. He has been dead many, many years, but I cherish his memory to this day, and shall never forget him.

There were several ballotings, as many, I think, as four or five; and in all of them except the last the Whig vote went solidly for Wright. Next to him came Hammond, and next to Hammond myself, the others following in scant and straggling procession. Wright's name being withdrawn, the next ballot resulted in my election by an overwhelming majority, the whole Whig vote, or nearly the whole of it coming to my support. I had no cause to anticipate this timely rally of my political adversaries to my assistance, and it surprised me almost as much

as it gratified me. And it did gratify me profoundly, for when one is a candidate it is a pleasant thing to be elected even by the votes of the opposition.

I served out my term of four years as Solicitor-General, and the office I next held was that of Reporter of the Supreme Court. For this I had no contest. As soon as the Justices of the Court were informed that I would accept it, each of them wrote to me signifying his intention to favor my appointment. I was appointed in 1864, when I was 37 years of age, and my resignation followed in 1867. At the age of 48, in July, 1875, I became by Executive appointment an Associate Justice of the Supreme Court. Not only was this position unsought by me, but when it was first tendered I declined it, and after being twice elected by the Legislature without opposition, once to cover the unexpired term vacated by my predecessor, and next for a new and full term, I resigned early in 1880. Unsought also was the office of Chief Justice of that Court, to which I was appointed by the Governor in January, 1887, in the 60th year of my age, and which, after being again twice elected by the Legislature without substantial opposition, I resigned in 1894.

Here the junior period of my life terminated, and with it my career as the recipient and occupant of public office. My retirement to private life was voluntary and I supposed and intended it to be perpetual. Then the public duties of mere citizenship began seriously to engage my attention. The noble ambition to know how to vote took possession of me. I sincerely desired to qualify myself for the exercise of the elective franchise. The "money question" was then, as it still is, before the country, and I longed to understand it and see for myself how it ought to be decided. My ignorance of it was utter and profound. In the summer of 1895, laying aside all other business, I devoted myself to the study of this one subject. At first the sole end I had in view was to qualify myself as a voter; but I soon found out from an examination of the standard works and other writings that nobody really understood the subject at bot-

tom, and that I was hardly less ignorant concerning it than the rest of mankind. This fired me with zeal not only to master it but to become its expounder to the world. Accordingly, I began writing down in note-books brief notes of my reflections, meditations and acquisitions touching value and its measurement and touching money and divers related topics. This practice I have continued for five years and am still engaged in it. The note-books have multiplied to more than twenty and their contents to more than two thousand pages, and I frankly say I have not yet qualified myself to vote intelligently on the money question, though, I believe I am almost qualified.

By the time I had filled five or six books I began to count confidently on solving the question in a short time, for I certainly knew more about it than anybody else did, and I thought full and perfect knowledge was in sight. Unfortunately I complimented myself secretly upon occupying an advance position in the field of financial intelligence. It seemed plain that the responsibility of instructing the world was about to fall on me. As matter of conscientious duty I began to consider what station within my reach would render my teaching most influential and effective. I foresaw that I should need an appropriate rostrum from which to proclaim the veritable financial truth, the call to preach which had come to me, though the whole of the truth itself had not arrived. Here the senatorial bee commenced buzzing in my bonnet. I realized that a seat in the Senate of the United States would afford the very rostrum suited to my purpose. After some deliberation I elected myself to the Senate for the term of six years from and after the 4th of March, 1897, relying confidently on the Legislature of my State, my native State to ratify my choice. To obtain this ratification it was only necessary, I supposed, to announce with due publicity my candidacy for the office. This I did, in May, I believe, some five months before the election was to come off in October. The announcement was made in a way and with attendant circumstances calculated to render it impressive and imposing if any

considerable number had been present to hear it. At half price, full price being \$75, I chartered the Grand Opera House in Atlanta for a whole evening, advertised widely by press and hand bills that I would address the public, and invited attendance by everybody. But everybody did not come. The public took no interest in the proceeding. The audience was scarcely larger than the one now before me, and consisted chiefly of my close and intimate personal friends. I was unwell and unfit to speak, but I did speak, and at the close broke the undreamed of secret of my senatorial aspirations to an astonished thin house. I am sure it struck every one—every one that heard it then or heard of it afterwards—with surprise. In that way and to that extent it was certainly impressive.

Having made my announcement I rested on it quietly, and left it to work its way to consequences. When the Legislature convened and the day of election drew nigh I reminded the members in a short printed card, which I caused to be circulated among them, that I was a candidate, and the senior candidate at that. All of them certainly knew of my candidacy, though I never urged it *viva voce* upon one of them, nor did I with voice or pen privately solicit any one of them to vote for me. My campaign was not very active, but it was entirely open, what there was of it. A deadlock, caused wholly by the junior candidates, took place and lasted many days. While it was progressing, or rather, arresting progress, I printed and circulated two or three brief letters or addresses to the members collectively. In one of these I appealed, rather stirringly I thought, to Felder, Knowles and Jack Slaton, the members from the county of my residence, to rally to me; but they never rallied. That no one voter for me in the deadlock did not discourage me in the least. Though I was the senior candidate and the light was shining fully upon me, I felt as sure of success as the darkest of all dark horses. My faith was so strong that I printed it. One of my paper emissions was headed with that title. My position became amusing, and even to myself my candidacy

seemed partly in earnest and partly a joke. It was real funny and I enjoyed it; but I sincerely wished to be elected, and even now I think I ought to have been.

The deadlock went on, and though I abstained throughout from making a personal canvas, I was not entirely mute but wrote and printed several small documents—letters with a tinge of argument. What I stressed chiefly was my seniority; I was senior as a candidate and in every other respect. That was my main reliance; but my age attracted no attention from the public, the press or the Legislature. The members seemed distant and indifferent. I walked up and down, as I had done for awhile when a candidate forty years before for Solicitor-General but no one noticed me. I felt that I was the studied object of neglect, and to be on such cold terms with the people's representatives grew painful. I wanted to get closer to them. For this purpose, I decided to apply for leave to deliver an address in the Hall of the House of Representatives on a certain evening. This application was made through my kind friend ex-Governor Boynton, who obtained for me the leave I sought. The House generously granted me the use of the Hall, but of course without making any promise, express or implied, to hear me. The leave to speak was not revoked, it never has been, but before the appointed evening arrived, the deadlock was broken, one of the junior candidates was elected, the prize had vanished, and I was left with a carefully prepared oration on my hands, with a place to deliver it, but no one to deliver it to and no object to deliver it for. A man must not only be senior but considerably advanced in seniority in order to realize such an unique experience. What I intended to say is on record. It was published in an extra of the Atlanta Journal as "An Address not Delivered."

When the election took place I was not present, but was in another part of the city diligently engaged in making a final draft of the address which was to carry the election in my favor.

I learned afterwards that I was not voted for by a single

member, and I can truly say that no member ever promised to vote for me, or intimated that he had the slightest intention of so doing. Towards no member do I entertain the least ill-will or malice. Malice is a thing that cannot lie on the same pillow with my head. But I did feel slightly aggrieved personally by the failure of the representative from Rabun, my native county, to vote for me. That is the one grievance that touched my sensibilities, and one that I could not have believed possible had it not occurred.

From the record of my official life which I have recited in your hearing, you can see how seniority, according to my experience of it, stands in Georgia politics. If, in the light of this experience, I should write an epitaph for myself, I think it would be this:

"When first a candidate he prevailed without effort over many competitors; afterwards he was several times chosen without being a candidate at all; when last a candidate he was unanimously defeated—defeated by acclamation, not receiving a single vote." Age, mere human seniority, is supposed to have, and indeed it has, some advantages, but it fails—in my case it signally failed, to draw votes in a Senatorial election. When I had the rank of a junior I got office with ease—got it occasionally without even the formality of being a candidate; but when I became really competent to render useful public service, or rather, when I had a fair prospect of arriving at competency in the near future, I was ignored and seemed to be forgotten. Be it so. It is not my purpose to complain, but only to register and read the record with historic fidelity.

The spirit of counsel used to descend upon old men. So it does still, but no doubt with less frequency and less force than it did formerly. I have occasionally felt its influence myself—a sort of yearning to offer advice. But I rarely offer it, for in this fast age, this age of junior supremacy, an old man's counsel is never invited and seldom taken. Sometimes I can scarcely resist the impulse I feel to advise somebody, yet I do resist, for I

know that by reason of seniority, I have lost my place, and people would not listen to me.

I thank you for your attention and hope you will accept this as a performance of my contract to make a speech.

APPENDIX R.

MUNICIPAL OWNERSHIP OF LIGHT, WATER AND TRANSPORTATION SYSTEMS.*

PAPER BY PAUL F. AKIN OF THE CARTERSVILLE BAR.

Municipal ownership of Light, Water and Transportation systems has been tried in a sufficient number of cities to demonstrate to a great many of the most advanced thinkers on this subject, not only that this solution of the problem is practical, but that it is advisable.

Of these three, the water-works system is, perhaps, more generally owned and operated by municipalities; and those people who are opposed to municipal ownership seem to present their arguments more strenuously in regard to the latter two.

To me it seems that the government, city or national, should own all systems which affect the public and are operated exclusively for them so that these systems should be operated in the way that will give the greatest benefit to the public and not to a comparatively few—the stockholders in a private corporation. The national government should own and operate these systems—railway, postal, telegraph and telephone—which affect the public of the whole country; and municipalities, those which affect the public of the cities.

A notable illustration of the benefit derived from ownership of railroads by the government is Australia. There the railroads compare favorably in construction and operation with the railroads of this country. They were built several thousand

* A symposium on this interesting subject was planned by the Executive Committee, and several short papers were promised. That of Mr. Akin, however, was the only one forthcoming. Mr. Akin himself not being present, the paper is here printed by direction of the committee.
—Secretary

dollars cheaper per milé than those in the United States; they are operated cheaper and there are more miles of roads to the number of the people. The experiment has been declared a success.

Now, if a national government can construct, own and operate national railways successfully, why can not a municipal government do the same in regard to street railways? And if municipalities can operate street railways so that the public will derive the greatest possible benefit therefrom, can they not do the same with water and light systems?

The streets of a city are made and intended for the use of the public. The citizens of the city pay the necessary taxes to keep the streets in repair. The citizens ought to be the recipients of whatever revenue is derived from the use of the streets. But this is not always the case. Instead of the taxpayers getting this benefit, we see municipalities granting franchises, which are often very valuable, for long terms of years to railway, electric and gaslight companies without charging them one cent, paying a high rate for lights—in the case of the latter two—then taxing the citizens to pay this extra expense. On the other hand, if these systems were owned by municipalities, light, water and transportation could be furnished the taxpayers at a much smaller cost than is charged when the systems are owned by private corporations; or, the citizens could be furnished at the same rate and the profits, which are often enormous but which are sometimes made to appear small by the private corporations watering their stock, would go into the city treasury and reduce the taxes.

Glasgow, Scotland, gradually bought the street railway, water and light plant and now owns and operates them. The profits go into the city treasury, and are so large that all of the municipal expenses are paid without the citizens being taxed one penny. If Glasgow can do this, why can not the enterprising, energetic and progressive cities of the United States do as well, if not better? To say that they could not, would be saying that

the people of the United States did not have that push and energy and ability to successfully manage large enterprises—the very thing for which America is most noted among the nations.

Detroit, Michigan, is, perhaps, the most progressive city in the line of municipal ownership in the United States, owning and operating gas and electric light plants and water-works system. By the operation of the electric light plant alone, the city saves over one hundred thousand dollars a year; and also saves large sums by operating the other two systems. What vast amounts other cities could save if they would follow in the footsteps of Detroit.

We are all familiar with the struggle Chicago had with the corporation owning the street railways when it was trying to get the municipal authorities to extend its franchises for fifty years; the vast amount of money the corporation spent buying the council, and how, had it not been for the veto power of Mayor Harrison, the franchises would have been given. It is said that Mayor Harrison could have become, suddenly, a very rich man had he not used his veto power. Think of the value of those franchises if the corporation wanting them could afford to spend the amount of money they are reported to have spent in buying a sufficient number of votes in the council and trying to buy the mayor. And yet these franchises are generally given away. What a saving to the city if it owned and operated only its street railways, to say nothing of the electric light plant.

Boston owns and operates a municipal printing plant. It does all the printing for the city. At the contract price which, before the plant's construction, had been paid for printing for the city, over eight thousand was saved the first eleven months and over ten thousand dollars each succeeding year. I mention this fact to show that municipal ownership of all public utilities is best and cheapest for the taxpayers of municipalities.

Not long since I saw a list of twenty cities, all of about the same number of inhabitants each. In ten of these cities the electric light plant was owned and operated by the municipal

authorities; and in the other ten, by private corporations. The cost of the arc lights was about forty dollars cheaper per light in those cities where there was municipal ownership.

Existing conditions in our own capital city are a fit illustration for the advocate of municipal ownership. The daily papers are filled with various contentions of various gentlemen, not on the subject of municipal ownership, but on one, which, if municipal ownership existed, or was contemplated, would abolish the contentions and contenders, and give to the public the large profits evidently expected by the rival private corporations.

The facts, as I understand them, are briefly as follows:—Two rival private corporations want electric light and street railway franchises and are spending money in obtaining the best talent possible in contending before the municipal authorities and in the federal courts, while the taxpayers do not receive even the benefit of competition. They are both after what nearly everybody wants—the “almighty dollar.” Neither is very anxious for competition. Both have tasted the fruits of monopoly and liked it. Both realize the franchises they have, and those they want are so very valuable that they are willing to expend large sums of money in erecting electric light plants and street railway systems which will not have a monopoly, but which will be competitive. Both have had franchises given them and want others. Why are these franchises, which must be of great value, given away? Instead of the city giving franchises to a private corporation allowing it to erect an electric light plant or street railway system, why does not the city erect its own light plant and railway systems, or condemn and buy those in operation, and furnish lights and transportation at cost, or, furnish them at the same rate now paid and turn the profits into the city treasury? Why do not the citizens receive the benefits derived from the use of the streets? Suppose the rival companies should combine; the almost universal history of competitive private corporations owning and operating public utilities in the same

municipality is, that they do combine. Atlanta does not fail in what it undertakes; and if Atlanta were to own and operate its own electric light plant and street railway system, Atlanta would not fail in that.

The opponents of municipal ownership contend that too much power is given the party in control; that positions are given party favorites without due regard to their ability. There is, no doubt, some truth in this. But suppose that the party in control does have some power where there is municipal ownership, is it not better that this power should be in a party—a part of the people—than in a private corporation? That power is going to exist wherever any of these systems exist. Would it not be easier to prevent the abuse of this power if it was in a party, or the leaders of a party, than it would be if it was vested in a private corporation?

Where private corporations own public utilities and make a success of the management of them, municipal ownership of them could succeed. A good and complete system of civil service would insure success. Have the applicants for positions appointed under civil service rules; have them know that they will retain their positions as long as they are proficient, and no longer; have the managers of the plants appointed under civil service rules; pay them good salaries, so that competent men can afford to give their time to the management of the enterprises; give them great powers in their management, they will feel their responsibility and be careful how they use their powers; let them know that the people look to them for successful management; let it be so arranged that should the management not be successful, the blame can not be shifted to the mayor, from the mayor to the council, from the council to a committee, from the committee to some other person, until the bewildered people know not on whom to vent their disapproval. Have the municipal ownership managed on the same basis that the private corporations are managed, and success will follow.

Many plans have been suggested and tried in regard to municipal enterprises. This is only an imperfect outline of one. Various plans have been successful. But the success does not depend so much on the plan as on the determination of the people. And there will come a time when the citizens of the municipalities throughout these United States will realize what vast sums those in control of the municipal affairs have, practically, been giving away and they will rise up in their might and either condemn those corporations utilizing their streets, or erect plants and operate them for their own benefit.

CONSTITUTION AND BY-LAWS OF THE GEORGIA BAR ASSOCIATION.

CONSTITUTION.

ARTICLE I.

The object of this Association shall be to advance the science of jurisprudence, promote the administration of justice throughout the State, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the bar of Georgia. This Association shall be known as The Georgia Bar Association.

ARTICLE II.

Any person shall be eligible to membership in this Association who shall be a member of the bar of this State in good standing, and who shall also be nominated as hereinafter provided. The judges of the Supreme, Superior and City Courts of this State, and the judges of the Federal Courts in this State, shall, so long as they remain in office, be honorary members of this Association, with all the rights and privileges of regular members, and without liability for the payment of dues.

ARTICLE III.

The officers of this Association shall consist of one President, five Vice-Presidents, a Secretary, a Treasurer, an Executive Committee, to be composed of the Secretary and Treasurer, together with four members to be chosen by the Association, one of whom shall be Chairman of the committee. Each of these officers shall be elected at each annual meeting for the year ensuing, but the same person shall not be elected President two years in succession. All such elections shall be by ballot. The officers elected shall hold office until their successors are elected and qualified according to the Constitution and By-laws.

ARTICLE IV.

At the meetings of the Association all elections to membership shall be by the Association, upon recommendation of the Executive Committee. All elections for membership shall be by ballot, and several nomi-

nees, if from the same county, may be voted for upon the same ballot, and in such case, placing the word "no" against any name or names upon the ticket, shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat any election for membership. Except during the meetings of the Association, the Executive Committee shall have full power to admit applicants to become members of this Association.

ARTICLE V.

Each member shall pay five dollars to the Treasurer as annual dues, in advance, and no person shall be qualified to exercise any privileges of membership who is in default. Such dues shall be payable and payment thereof enforced, as may be provided by the By-laws. Members shall be entitled to receive all publications of the Association free of charge.

ARTICLE VI.

By-laws may be adopted at any annual meeting of the Association by a majority of the members present.

ARTICLE VII.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each:

1. On Jurisprudence and Law Reform.
2. On Judicial Administration and Remedial Procedure.
3. On Legal Education and Admission to the Bar.
4. On Grievances.
5. On Memorials.
6. On Federal Legislation.
7. On Interstate Law.
8. On Legal Ethics.
9. On Reception.

A majority of the members of any committee, who may be present at any meeting of such committee, shall constitute a quorum for the purpose of such meeting. Vacancies in any office provided for by this Constitution shall be filled by appointment by the President, and the appointee shall hold office until the next meeting of the Association.

ARTICLE VIII.

The Executive Committee shall perform such duties as may be assigned to it by the President, or may be defined by the By-laws, except as herein otherwise directed.

ARTICLE IX.

This Association shall meet annually, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum. The Executive Committee shall require thirty days' notice of the time and place of meeting by publication in a public newspaper to be given, which publication shall be made by the Secretary.

ARTICLE X.

The Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.

ARTICLE XI.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association, or in his profession, on conviction thereof, in such manner as may be provided by the By-laws.

ARTICLE XII.

This Constitution shall go into immediate effect. This Association shall be incorporated under the laws of the State of Georgia as soon as practicable, and until such incorporation all money and property of said Association shall be vested in the President and Treasurer, as trustees thereof, who shall pay over and deliver the same to said corporation as its property, as soon as the corporation is created by law.*

*The charter was duly obtained. See First Report, page 16.

BY-LAWS.

I.

The President shall preside at all meetings of the Association, and in case of his absence one of the Vice-Presidents shall preside. He shall open each meeting with an annual address.

II.

The Secretary shall keep a record of all meetings of the Association, and of all other matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association with the concurrence of the President. He shall notify the officers and members of their elections, and shall keep a roll of the members, and shall issue notices of all meetings. His salary shall be \$200 per annum.

III.

The Treasurer shall collect and, under the direction of the Executive Committee, disburse all funds of the Association; he shall report annually, and oftener if required; he shall keep regular accounts, which shall at all times be open to inspection of the members of the Association. His accounts shall be audited by the Executive Committee. Before discharging any of the duties of this office he shall execute a bond, with good and sufficient security, to be approved by the President, payable to the President and his successors in office, in the sum of five thousand dollars, for the use of the Association, and conditioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof. His salary shall be \$100 per annum.

IV.

The Executive Committee shall meet upon the call of the Chairman. They shall have power to arrange the program for the annual meetings, and to make such regulations, not inconsistent with the Constitution and By-laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of their proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall examine and report upon all matters proposed to be published by the authority of the Association, and attend to the publication and distribution of the same. They shall have the power to make the Association liable for any debts

amounting to not more than half of the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.

V.

At each annual, stated or adjourned meeting of the Association, the Order of Business shall be as follows:

1. Reading minutes of preceding meeting.
2. Address of the President.
3. Report of Treasurer.
4. Report of Executive Committee.
5. Elections, if any, to membership.
6. Report of other committees.
7. Report of special committees.
8. Election of officers and appointment of committees.
9. Miscellaneous business.

This Order of Business may be changed by a vote of a majority of the members present.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

VI.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by letter to the Secretary to that effect, and by payment of his annual dues, he shall be deemed to have declined to become a member.

VII.

In pursuance of Article VII. of the Constitution, there shall be the following standing committees:

1. A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law, and of recommending such as, in their opinion, may be entitled to the favorable consideration of the Association.

2. A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending from time to time to the Association such action as they may deem expedient. Both of the foregoing committees shall invite suggestions on the topics confided to their charge from all the members of the Association, and if they see fit, from all the lawyers of the State; and where their report recommends changes in legislation,

the Association may appoint either the same or other committees to bring such matters properly to the attention of the General Assembly.

3. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what changes it is expedient to propose in the system and mode of legal education and of admission to the practice of the profession in the State of Georgia.

It shall be the duty of the foregoing standing committees to consider the suggestions made in each address and paper presented at each annual meeting of the Association, which fall within the scope of the topics confided to said committees, and to report thereon at the next annual meeting.

4. A Committee on Grievances, who shall be charged with the hearing of all complaints which may be made in matters affecting the interest of the legal profession, or the professional conduct of any member of this bar, and the administration of justice, and to report the same to the Association with such recommendations as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against such offenders and to such extent as the Association may order, the cost of such proceedings to be paid by the Executive Committee out of moneys subject to be appropriated by them.

5. A Committee on Memorials, who shall prepare and furnish to the Secretary brief, appropriate notices of members who have died during the year preceding each annual meeting; such notices not to exceed one page of printed matter, and to be published in the annual report. They shall also prepare or secure annually at least one biographical sketch of some member of the bench or bar of Georgia, now deceased, having special reference to his professional career, and have the same presented at the annual meeting; and, whenever practicable, they shall secure a steel engraving or other suitable picture of the subject of the sketch to be inserted in the published proceedings.

6. A Committee on Federal Legislation, who shall be charged with the duty of examining and reporting upon such Federal legislation, proposed or enacted, as may be of interest to the legal profession, and especially such as affects the Federal judicial system, and procedure and practice in the Federal courts.

7. A Committee on Interstate Law, who shall be charged with the duty of bringing to the attention of the Association such action as shall be proposed by the American Bar Association, looking to the promotion of greater uniformity in the laws of the several States on subjects of common interest; and of suggesting propositions looking to the same end, and, where such action is favored by the Association, to bring the same to the attention of the General Assembly, and to endeavor to secure the adoption of the legislation so recommended.

8. A Committee on Legal Ethics, who shall be charged with the duty of reducing to the form of rules or canons the principles of ethics regulating the relations of lawyers to the courts, the public, their clients and each other; with the further duty of taking such action as they may deem best, in case any departures from these principles by members of the bar of the State come to their notice or are brought to their attention.

9. A Committee on reception, who shall be charged with the duty at all meetings of the Association of promoting social intercourse and fraternity among the members, to the end that every member attending shall become personally acquainted with every other member.

VIII.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of the Association, and a list thereof, and of all special committees, transmitted to the Secretary within thirty days from each annual meeting, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with the power to adopt rules for their own government, not inconsistent with the Constitution or these By-laws. The Secretary shall, within thirty days after receipt thereof from the President, notify each committeeman, giving full list of his committee. Any standing committee of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation by the member so absent of his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance, and may provide for the disposition of the fines collected under such a rule.*

IX.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relation to this Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Grievances, in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall thereupon examine the complaint, and if they are of the opinion that the matters therein alleged are of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days of the time and place when the committee will meet for the consideration thereof, to be served on the member com-

*As to payment of expenses of committees, see Report for 1885-86, page 70. As to printing committee reports in advance of the annual meetings, see Report for 1886-87, page 6.

plained of, either personally or by leaving the same at his place of business during office hours, properly addressed to him.

If after hearing his explanation, the committee shall deem it proper that there shall be a trial of the charge, they shall cause a similar notice of five days of the time and place of trial to be served on the party complained of. The mode of procedure upon the trial of such complaint shall conform as near as may be to the provisions of §§420 to 434 of the Code, inclusive*

X.

Nominations of candidates to fill the respective offices may be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or to membership, must be by ballot. A majority of the votes cast shall be sufficient to elect to office; but five negative votes shall be sufficient to defeat an election to membership.

XI.

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the person thus appointed shall hold for the unexpired term of his predecessor; but if a vacancy occur in the office of President it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy, and the person elected shall hold office for the unexpired term of his predecessor.

XII.

All annual dues of this Association shall be paid in advance by each member upon his election, and on or before May 1st for each year during membership, and any member failing to pay his annual dues in such manner shall be in default, and upon the order of the President, the Secretary shall strike the name of such member from the roll of membership, and such member shall not be reinstated unless, for good cause shown, the President shall excuse such default, in which last event the name of such member shall, upon the order of the President, be restored by the Secretary to the roll of membership. The Treasurer shall on the 15th day of April of each year inform each member of the Association that on the first day of May next the Treasurer will draw at sight on said member for the amount due to the Association, and on the first day of May the Treasurer shall so draw for such dues upon each and every member of the Association who may at that time be indebted to the Association.

* The citation is to the Code of 1882. In Civil Code of 1895, the sections are 4481 to 4445 inclusive.

XIII.

These By-laws may be amended at any stated, adjourned or annual meeting of the Association by a majority vote of those present.

XIV.

Any officer may resign at any time, upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association, and from the date of the receipt by the Secretary of a notice of resignation, with an endorsement thereon by the Treasurer that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

XV.

The Association shall hold its annual meeting each year at such time and place as may be fixed by the Executive Committee, and by the direction of the Executive Committee the Secretary shall give notice of the time and place of such annual meeting by publication in a public newspaper for thirty days. If the President and Executive Committee shall determine that it is necessary for said Association to hold any other meeting during the year, the same shall be held at such time and place as the President and Executive Committee may fix, and upon twenty days' notice of such time and place, to be given by the Secretary, by publication in a public newspaper, and the Secretary shall give this notice upon the order of the President.

XVI.

No resolution complimentary to any officer or member shall be entertained.

XVII.

All addresses, essays and other papers, read at the meetings of the Association, shall be transmitted to the Secretary within thirty days from the adjournment of the annual meeting, and if not so furnished, the Executive Committee shall proceed to publish the proceedings without such papers.

OFFICERS AND COMMITTEES OF THE GEORGIA BAR ASSOCIATION.

FOR 1900—1901.

President.

H. W. HILL, Greenville.

Vice-Presidents.

First—CHARLTON E. BATTLE.....	Columbus
Second—JOHN C. HART.....	Union Point
Third—B. H. HILL	Atlanta
Fourth—A. F. DALEY	Wrightsville
Fifth—J. B. BURNSIDE	Hamilton

Secretary.

ORVILLE A. PARK, Macon.

Treasurer.

Z. D. HARRISON, ATLANTA

EXECUTIVE COMMITTEE.

BURTON SMITH, Chairman	Atlanta
J. M. TERRELL.....	Greenville
BOLLING WHITFIELD	Brunswick
LLOYD CLEVELAND	Griffin
ALEX R. LAWTON.....	Savannah

THE SECRETARY AND THE TREASURER *ex officio*.

STANDING COMMITTEES.

On Jurisprudence and Law Reform.

P. W. Meldrim, Chairman '.....	Savannah
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GEORGIA BAR ASSOCIATION REPORTS FOR SALE.

One copy of all the publications of the Association is mailed free of cost to each member of the Association. The Association desires also to exchange its publications with the several Bar Associations throughout the country. Extra copies of the reports and back numbers are sold at fifty cents per copy, except those for the years 1884, '85, '86 and '89. These are sold at \$1.00 each, and only to members of the Association. The edition of the 1889 report being very nearly exhausted, this report will only be sold with a complete set. The complete set of seventeen numbers will be sent post-paid for \$10.50, or the set bound in full sheep, four volumes, for \$13.50.

The Secretary will be glad to correspond with members and others in regard to completing broken sets.

Address all orders to the Secretary,

ORVILLE A. PARK, Macon, Ga.

J. D. Harrison

REPORT

OF THE

EIGHTEENTH ANNUAL SESSION

OF THE

Georgia Bar Association

HELD AT

WARM SPRINGS, GA.

ON

JULY 3RD, 4TH AND 5TH, 1901

EDITED BY

ORVILLE A. PARK

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ATLANTA, GA.

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GENERAL MINUTES.

FIRST DAY'S PROCEEDINGS.

WARM SPRINGS, July 3, 1901.

The Eighteenth Annual Session of the Georgia Bar Association convened in the Auditorium at Warm Springs at 10 o'clock a. m., and was called to order by the President, H. Warner Hill, of Greenville, the following members being present:

W. C. Adamson, Carrollton; P. F. Akin, Cartersville; A. L. Alexander, Savannah; Irvin Alexander, Augusta; R. C. Alston, Atlanta; Reuben R. Arnold, Atlanta; S. R. Atkinson, Atlanta; T. A. Atkinson, LaGrange; A. O. Bacon, Macon; W. W. Bacon, Jr., Albany; Jas. Bishop, Jr., Eastman; J. C. C. Black, Augusta; L. E. Bleckley, Clarkesville; O. H. B. Bloodworth, Forsyth; Joseph D. Boyd, Griffin; J. Branham, Rome; Shepard Bryan, Atlanta; W. C. Bunn, Cedartown; W. B. Butt, Columbus; A. A. Carson, Columbus; Thos. J. Chappell, Columbus; W. G. Charlton, Savannah; W. M. Clark, Forsyth; Lloyd Cleveland, Griffin; S. A. Crump, Macon; H. C. Cunningham, Savannah; A. F. Daley, Wrightsville; Washington Dessau, Macon; Roland Ellis, Macon; A. W. Evans, Sandersville; J. J. Flint, Griffin; F. U. Garrard, Columbus; L. F. Garrard, Columbus; H. R. Goetehius, Columbus; Arthur Greer, West Point; C. R. Gwyn, Zebulon; T. A. Hammond, Atlanta; W. M. Hammond, Thomasville; W. R. Hammond, Atlanta; T. W. Hardwick, Sandersville; M. W. Harris, Macon; Z. D. Harrison, Atlanta; J. C. Hart, Union Point; Frank Harwell, LaGrange; S. B. Hatcher, Columbus; H. W. Hill, Greenville; F. A. Hooper, Americus; W. S. Howell, Greenville; W. R. Jones, Greenville; J. R. Lamar, Augusta; A. R. Lawton, Savannah; John D. Little, Columbus; W. A. Little, Columbus; F. M. Longley, LaGrange; F. P. Longley, LaGrange; Samuel Lumpkin, Atlanta; F. B. McLaughlin, Greenville; A. S. McLendon, Cuthbert; H. McWhorter, Lexington; P. W. Meldrim, Savannah; J. H. Merrill, Thomasville; B. S. Miller, Columbus; E. T.

Moon, LaGrange; Sylvanus Morris, Athens; J. W. Park, Greenville; O. A. Park, Macon; F. D. Peabody, Columbus; A. P. Persons, Talbotton; A. G. Powell, Blakely; H. H. Revill, Greenville; D. W. Rountree, Atlanta; A. H. Russell, Bainbridge; L. C. Russell, Winder; R. B. Russell, Winder; Samuel Rutherford, Forsyth; J. H. Sanders, Cedartown; W. L. Scruggs, Atlanta; W. E. H. Searcy, Jr., Griffin; R. L. Shipp, Moultrie; T. J. Simmons, Atlanta; J. L. Sweat, Waycross; Burton Smith, Atlanta; C. C. Smith, Hawkinsville; John R. L. Smith, Macon; Jack J. Spalding, Atlanta; C. P. Steed, Macon; W. E. Steed, Butler; J. J. Strickland, Athens; J. M. Strickland, Griffin; J. M. Terrell, Greenville; J. R. Terrell, Greenville; A. H. Thompson, LaGrange; J. H. Tipton, Sylvester; J. L. Travis, Atlanta; C. A. Turner, Macon; F. E. Twitty, Brunswick; Howard Van Epps, Atlanta; Chas. R. Williams, Columbus; J. L. Willis, Columbus; Minter Wimberly, Macon; W. A. Wimbish, Columbus; M. J. Yoemans, Dawson.

The President: It becomes my pleasing duty to call to order the Eighteenth Annual Meeting of the Georgia Bar Association. The first business is the report of the Executive Committee, through its chairman, Mr. Burton Smith.

Mr. Smith: The Executive Committee has no formal written report to submit. Our work has largely been taken up with the preparation of the program for this meeting, which will be submitted in a few minutes. We have elected to membership during the recess of the Association in accordance with the authority conferred upon us by the by-laws, the following new members: D. W. Rountree, Atlanta; W. C. Bunn, Cedartown; Joe H. Sanders, Cedartown; Robert C. Alston, Atlanta; George W. Owens, Savannah; A. L. Alexander, Savannah; S. A. Crump, Macon; M. B. Gerry, Macon; Robert Hodges, Macon; Samuel Rutherford, Forsyth.

We also recommend for membership the following gentlemen; the names having been presented to us during this session of the Association we have no authority to elect under the by-laws, but recommend their election to the Association: J. L. Travis, Atlanta; Minter Wimberly, Macon; Arthur Greer, West Point; J. D. Boyd, Griffin; Arthur G. Powell, Blakely;

A. M. Raines, Dawson; T. L. Bowden, Columbus; I. T. Irvin, Washington; J. J. Flint, Griffin; J. C. Cook, Columbus, and W. E. Steed, Butler.

I am glad to report that the financial condition of the Association is good, better, I believe, than it has ever been. This is doubtless due to the very efficient work of our Treasurer.

Our attendance was good last year; it will be good this year. We find the interest of the Bar and the people of the State in the Association and its work is greater than it has ever been.

The Executive Committee desire to propose an amendment to the Constitution. As the Constitution now stands the Executive Committee is composed of the Secretary and Treasurer *ex officio*, together with four elected members. Our amendment which we request the Association to pass provides that Article Three of the Constitution be amended by inserting in the third line thereof after the word "the" the word "president," the effect of which is to make the president an *ex officio* member of the committee. It would require a three-fourths vote to pass this amendment.

The program has been made up for to-day. The intention is to hold three days, as we have much interesting matter, and enough to last us three days. On the third day there will be held during the afternoon a barbecue given by Mr. Davis, our host. The barbecue will be completed in time for most of us, I hope, to catch the afternoon trains, should we desire to do so. The program will be announced this afternoon for to-morrow. The program for this morning is as follows:

(Mr. Smith read the program.)

I may remark here that we have always found the discussion of these reports particularly interesting and instructive. The hours fixed by the committee for holding sessions are ten to one during the forenoon, and no afternoon session.

There will be a session this evening at 8:30, the program for which will be announced this afternoon. It is the intention of the committee to make the night sessions particularly interesting, to have less dry and technical law, and more matter of

general interest to all persons. We will have, I think, one or two innovations, which, we believe, will particularly appeal to the ladies.

The President: What is the pleasure of the Association with reference to the report of the Executive Committee?

Mr. Battle: I move that it be received and adopted.

Motion to adopt the report was unanimously carried.

The President: The next business is the address of the President.

The President then delivered his address. (See Appendix A.)

When the applause had somewhat subsided the President announced a recess of five minutes.

Association called to order.

Mr. Burton Smith: The names of the gentlemen recommended by the Executive Committee for membership are now before the Association for action.

The President: Does the chair understand, Mr. Smith, that you put these names before the Association for election now?

Mr. Smith: I believe that now is the time.

Judge McWhorter: I move that the names lie on the table until to-morrow morning.

This motion was carried.

The President: The next business is the report of the Treasurer.

Mr. Harrison: Mr. President, the Treasurer takes pleasure in reporting to the Association that it owes no man anything, nor does there appear to be any reason whatever why the Association should ask favors of any man, except it be of the weather man or of our very amiable host.

The Treasurer reports further that a statement of his receipts and disbursements during the past year, accompanied with proper vouchers, has been examined and approved by the Executive Committee. That statement of account shows that his receipts were \$1,067.18 and that his disbursements have been \$938.66, leaving a cash balance in the treasury of \$128.52. From this statement it will be noted that many of the members

of the Association, recognizing their obligation to the Association, have honored its drafts, while possibly a like number have neglected or forgotten to do so.

The President: What is the pleasure of the Association with reference to the report of the Treasurer?

Mr. Terrell: I move it be received and adopted.

Motion carried.

(For itemized report see Appendix B.)

The President: The next in order is the report of the Committee on Judicial Administration and Remedial Procedure, through its chairman, Judge Hamilton McWhorter.

Judge McWhorter: Mr. President, your Committee on Judicial Administration and Remedial Procedure beg leave to make the following report: (See Appendix C.)

The President: Discussion of the report that has just been read is now in order.

Mr. Terrell: Mr. President, the paper just read contains some most admirable suggestions. I think it would be a most excellent idea to have the paper lie over until the next meeting, and to request the Executive Committee to arrange for a symposium upon it, and in the meanwhile that all the Solicitors throughout the State be served with a rule *nisi* to show cause why that part of the report touching the criminal law should not be adopted as part of our Constitution and laws. I, therefore, move that the matter go over until the next meeting of the Association, and that the next Executive Committee be instructed to arrange for a symposium upon the questions presented by the report.

Colonel Lawton: I second the motion.

Motion was unanimously adopted.

The President: The next business in order is the report of the Committee on Legal Education, through its chairman, Judge Spencer R. Atkinson.

Judge Atkinson: I desire to state for the information of the members of this Association that I have found it utterly impossible to have a meeting of that committee so as to take under

advisement the report which I had formulated for the purpose of presenting it to the Association. It now seems that we have not a quorum of the committee present. There are only two members here. If it be the pleasure of the Association that the members of the committee who are here shall make a report, why we will take great pleasure in doing so, provided it be deferred until this afternoon, say at half past four or five o'clock. There is no subject probably that will be presented to the Association that will elicit more interest than the one that will constitute the report of this committee. I think it proper that we should have some general discussion of this subject of Legal Education and Admission to the Bar. I ask that we may be permitted to report this afternoon, say at half past four o'clock.

Mr. Terrell: As the Executive Committee has arranged a program somewhat different, I move that the committee be allowed to report to-morrow morning if that will suit the chairman.

Judge Atkinson: I accept the substitute. We may have a quorum here then.

Judge Hamilton McWhorter: I second the motion.

Motion adopted.

Judge Atkinson: Is it the order of the day for nine o'clock to-morrow morning?

The President: The Chair did not understand that Mr. Terrell fixed any particular hour.

Mr. Terrell: The Committee will fix the hour.

The President: The next is the report of the Committee on Jurisprudence and Law Reform.

Mr. P. W. Meldrim: That Committee is very much in the position that the Committee represented by Mr. Atkinson is. I have prepared a very brief report intending to submit it to my colleagues, but there is no member of the Committee here except myself. Probably they may be in on a later train, and I would prefer to submit the matter to them for their approval. I suggest that it take the same course as the other report.

It is a very brief report, still it's not a report of the Com-

mittee; it's only a report by myself as Chairman of the Committee. I have roughly prepared same and intended to submit it to my colleagues. The Association can do with it as it sees fit.

Mr. W. Dessau: I would suggest that we dispose of it to-night. What is on the program for to-night?

The Secretary: The papers by Mrs. Terrell and Major Black.

Mr. Meldrim: As far as I am concerned, any time will do. Of course that is subject to the wish of the Association. All I can say is that I have been unable to get the Committee together, and the members are not here.

Mr. Harrison: I move that the report be deferred with a direction to the Executive Committee to make a further assignment.

Mr. Terrell: I second the motion.

Motion carried.

The President: We will now have the report of the Committee on Federal Legislation by Hon. J. C. C. Black, the Chairman.

Mr. Black: Mr. President, it has been impracticable to have a meeting of the Committee. There are only two members present, Senator Bacon and myself, so that I have no report to make. I think after such examination as I have been able to make of the Statutes of the last Congress, that there has been no legislation that would be of any special interest to the Association. I have not been able to inform myself as to the legislation proposed. I shall not take up any further time, but will only say I think the Association loses nothing by our failure to make a report.

The President: The next business in order is the report of the Committee on Grievances. Is the Chairman or any member of that Committee present?

Mr. Moon: Mr. President, I believe I am a member of that Committee, but, so far as I am aware, the Chairman has never called the Committee together, and I do not know whether there is a report or not.

The President: The next business is the report of the Committee on Legal Ethics by Judge Howard Van Epps.

Judge Van Epps: Mr. President, I have a somewhat extended report embodying particularly my own personal views. No other member of my Committee is present. If it's the pleasure of the Association that I shall proceed with my report, I will take pleasure in reading it.

From the Audience: Proceed! Proceed!

The President: In the absence of any objection, we take it that it is the pleasure of the Association for you to proceed.

Judge Van Epps presented the report. (See Appendix D.)

The President: The discussion of the report which has just been read is now in order. Does any member of the Association desire to discuss it? If not, the next business is the report of the Committee on Interstate Law, by its Chairman, Capt. Clifford L. Anderson.

Mr. Terrell: Capt. Anderson is not here.

The President: The Chair is informed that Capt. Anderson is not present.

Mr. Wimbish: I am the only member of that Committee who is present. There has been no call for a conference with reference to this report. It may be that the other members will come in to-day or to-morrow.

Mr. Terrell: I move that it be carried over until to-morrow.

Col. Lawton: I second the motion.

Motion carried.

The Chair: This completes the program that has been arranged by the Executive Committee for this morning.

Mr. Burton Smith: Before the Association adjourns, I desire to make an announcement. I have been requested to ask the gentlemen of the Association to assemble in front of the hotel at four o'clock this afternoon. The photographer wishes to take a photograph of the members who are present.

Judge McWhorter: I move to adjourn.

Motion seconded and carried.

FIRST DAY'S PROCEEDINGS—EVENING SESSION.

The meeting was called to order by the President.

The President: According to the program as arranged by the Executive Committee, the first business in order is a paper by Mr. Reuben R. Arnold on "Delays and Technicalities in the Administration of Justice."

Mr. Arnold presented the paper. (See Appendix E.)

The President: Next on the program is an address by the Hon. J. C. C. Black.

Mr. Black delivered his address. (See Appendix F.)

The President: Having completed the program arranged by the Executive Committee, what is the pleasure of the Association?

Mr. Spalding: I suppose by that announcement that the body is about ready to adjourn. We have with us a distinguished member of the Atlanta Bar, whose presence ought not to be allowed to go by unnoticed upon the minutes and records of this Association. I happen to know that one of the members of this Association, who has been an honor to it in the highest degree, both upon the Bench and at the Bar, and who is here with us now, is celebrating the anniversary of his seventy-fourth birthday. While I have no set resolution prepared, I think I at least voice the sentiments of every member of the Georgia Bar when I extend our hearty good will and hearty congratulations and hearty wishes for many happy returns to the distinguished and honored gentleman to whom I refer, Honorable Logan E. Bleckley. I move that there be spread upon the minutes of this Association in appropriate language the expression of this sentiment in behalf of the Association. (Applause.)

Mr. Meldrim: I second the motion. I want to add only this word. I take some exceptions to my friend's language in referring to Chief Justice Bleckley. I know that there are a great many good things in Atlanta, my friend sitting opposite among the number, but all the good things do not belong to Atlanta, and those of us who live on the coast claim an equal share in

loving and respecting our Chief Justice. I therefore hope that when the Secretary records the resolution of Mr. Spalding the language to the effect that Judge Bleckley is of Atlanta will not be used, but Chief Justice Bleckley of the State of Georgia—of the *whole* State. (Applause.)

Mr. Spalding: I accept the amendment.

The President: Is there anything further to be said on the motion? If not, I put it to vote with a great deal of pleasure.

Motion unanimously carried amid a round of applause.

From the Audience: Bleckley! Bleckley! Speech! Speech!

Judge Bleckley: Mr. President, and my brethren, and the ladies: Silence is sometimes more expressive than any speech that I am able to make, and on this occasion such is the case. I would willingly have remained silent and *felt* your compliment, but after your call on me it behooves me to make some response. That response is that you have the thanks of my heart for what you have done, and I would pray for power to assure you how deeply and tenderly my heart is affected by what you have said and done. Pardon me, if you please, from any attempt to make further remarks. I thank you, and I beg you to indulge me in silent reflection upon this occasion, and upon the feelings that it rouses in my heart. (Applause.)

The President: What is the pleasure of the Association?

Mr. Dessau: I move to adjourn.

Motion carried.

SECOND DAY'S PROCEEDINGS—MORNING SESSION.

Meeting called to order by President at 9:30 a. m.

The President: The first business to come before the Association is the election of new members, and under the Constitution they are elected by ballot. The Secretary will read the name of the first candidate.

Mr. Burton Smith: The Executive Committee request me

to announce as candidates for election the following gentlemen: J. D. Boyd, Griffin; J. J. Flint, Griffin; Arthur Gray Powell, Blakely; A. M. Raines, Dawson; I. T. Irvin, Washington; Minter Wimberly, Macon; J. C. Cook, Columbus; T. L. Bowden, Columbus; J. L. Travis, Atlanta; Arthur Greer, West Point.

Judge Van Epps: Mr. President, I am not quite sure that I correctly remember our course of procedure upon this subject in the past, but as I recall it the Secretary is allowed to cast the ballot for the entire Association, provided there are no dissenting votes, and I therefore move that the election of all of the gentlemen whose names are proposed upon the list just read be had by the Secretary casting the ballot of the Association in favor of their election.

Mr. Smith: I second the motion.

Judge W. R. Hammond: I make this point: That the names of these gentlemen ought to be put on record in full.

The Secretary: The Secretary will endeavor to give the full and correct names of all the members.

Judge Hammond: Still I make the point that the initial is not the name.

Mr. Burton Smith: The initial is what people generally go by.

The President: Where a man signs his name by his initials it is binding on him, I believe.

Judge Hammond: I haven't made any motion.

The President: The motion is made that the Secretary cast the vote of the Association for the gentlemen whose names have been proposed for membership. Is there anything to be said on the motion?

Mr. Black: I would like to have the provision of the Constitution read.

The President: The Secretary will read the provision of the Constitution bearing on that question.

The Secretary: Article IV of the Constitution reads:

"At the meetings of the Association all elections to membership shall be by the Association upon recommendation of the Executive Com-

mittee. All elections for membership shall be by ballot, and several nominees, if from the same county, may be voted for upon the same ballot, and, in such case, placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat any election for membership. Except during the meetings of the Association, the Executive Committee shall have full power to admit applicants to become members of the Association."

Mr. Black: For the purpose of invoking the ruling of the Chair, I state that the motion is not in order; it is not right.

The President: The Chair will hold that by unanimous vote or without objection it can be done.

Mr. Black: As I understand it, a unanimous vote is required.

Judge Van Epps: I will state to my brother that in making my motion I thought the true construction of the Rule to be that if there were any dissenting votes we would have to proceed as prescribed by the Constitution.

Mr. Black: Mr. Chairman, under the General Rule as I understand it—I do not know whether there is anything bearing on it in our own by-laws—the Rules of the House can be suspended by a two-thirds vote and the ballot cast by the Secretary on motion. That's the general parliamentary rule.

The President: The Chair will hold that by a two-thirds vote the rules can be suspended.

Judge Sweat: Mr. President, if I recollect the Rule in question it provides that as many as five dissenting votes may prevent the election of any man. To suspend that Rule by a two-thirds vote would have the effect of abrogating the Rule itself, which puts it in the power of as many as five to prevent the election of a new member.

Mr. Burton Smith: I think, Mr. President, that would be true provided it was the object of the motion to abrogate the rule, but where it is merely a measure looking to the saving of time to the Association that Rule doesn't apply, nor is the by-law abrogated. If it is the intention of the Association to do away with that portion of a by-law, then the position would be proper.

Mr. Peabody: Mr. President, I make a point of order that the motion is out of order, for this reason, that this Association can't empower our Secretary to do what we couldn't do ourselves, and under our rule we can only vote for two at a time, when the two are from the same county, and it is well that we stick to the rule. I expect to vote for each gentlemen on the list, but we can only vote for two when they are from the same county.

The President: With reference to the point raised by Mr. Peabody, the Chair will hold, in view of the fact that it has been the custom and the precedent, so far as the Chair has knowledge, that the vote of the Association has been cast in accordance with the motion proposed by Judge Van Epps, that the motion of Judge Van Epps is in order.

Col. Lawton: By what vote?

The President: I should say by two-thirds.

Col. Lawton: I favor Judge Van Epps's Motion in this case, sir, and shall vote for it, but in order to avoid establishing what I believe would be a dangerous precedent, I appeal from the decision of the Chair, and I do it on the ground that if the rule can be suspended by a two-thirds vote, then two-thirds of the Association can at any time override the five negative votes against the election of a member of the Association.

Mr. Spalding: Mr. President, is this a debatable question? I don't want to inflict myself for any length of time on the body, but it seems to me that Mr. Lawton's view ought to be sustained. The inevitable result of establishing such a precedent as this will be to do away with the provision that five negative votes shall operate against the admission to membership. It doesn't matter what the intention is; it doesn't matter what time taken up is, the time will come in the future when it will be very unpleasant, and when it will be very unfortunate for this organization to establish a precedent and set up a piece of machinery by which two-thirds of the members of this body can abrogate that rule in effect, whether it's the intention or not. It's mighty easy to fall into these methods, and when the

time comes to invoke the beneficial influence of your by-laws and your rules, you will find out the mistake of it. It looks to me like the appeal ought to be sustained.

Judge Van Epps: I am put in an embarrassing position by the ruling of the Chair. I will be compelled to vote against the adoption of my own resolution; and if it will solve the matter, and save the consumption of the time of the Association, I would ask leave to withdraw the resolution; but I want to say this—the Chair is right in his recollection of the course pursued by us in the past—I believe for the entire period during which I have been connected with the Association. We have done it repeatedly, but it has always been by unanimous consent. If the rule requiring a written vote by ballot is not revoked by the unanimous vote of every member of the Association present, I apprehend that it is our duty to conform to the provisions of the rule; I, therefore, move to withdraw my motion.

Mr. Ellis: The motion of Judge Van Epps having been put and the decision of the Chair appealed from, it cannot now be withdrawn. I object to its withdrawal.

The President: Before the vote had been taken a question of order was raised and no decision of the Chair was had on that question. Hence, I think that a member has the right to withdraw his motion or at least to request its withdrawal at any time before it is put and passed upon by the Association; the Chair will so rule.

Mr. Ellis: Mr. President, I beg to inquire what is being discussed if there has been no decision.

The President: It is upon the question of order raised by Mr. Peabody upon the motion.

Mr. Ellis: I understood the Chair to decide on the point of order, and that is what I was appealing from.

Judge Sweat: I desire to state, Mr. President, notwithstanding the views I entertain upon this question, that I am heartily in favor of the election of every name presented, and I am also in favor of the motion made by Judge Van Epps, provided there is no objection to it. If there is one dissenting voice to

the motion which he makes, why then I think that the position taken is correct, but I see no difficulty, if we are all in favor of the election of the members, or of those whose names have been presented—I see no difficulty in passing his motion by unanimous consent, and I trust that that course will be taken. It would save a great deal of time and obviate any difficulty. The Chair can ascertain whether there is any objection. If not, why then his motion certainly could be passed by unanimous consent of this Association, and the Secretary could be authorized to cast the vote as provided for in the motion.

Mr. Battle: Mr. President, I address the Chair again, because I do not wish my position to be misunderstood. The position taken by my distinguished friend, Judge Sweat, if it should be held to be the prevailing rule in this Association, might at some future date be unsatisfactory. As I understand the purport of the resolution offered by Judge Van Epps it is not to abrogate any by-law, nor is it to set aside any provision of the Constitution under which the by-laws are enacted, but it is rather looking to a suspension of the by-laws for a temporary convenience. The point raised by Judge Sweat is that it would prevent the enforcement of the Constitution that any five negative votes could prevent the election of any applicant for admission to membership. In answer to his argument I read the following from the Constitution of this Association, which I think is a complete answer to the point which the gentleman has made:

“Article X. This Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.”

Judge Sweat: What section is that?

Mr. Battle: Section 10 of the Constitution. That is, I take it, a complete answer to the position taken by my distinguished friend upon my left, and if the object or purport of Judge Van Epps's resolution is to alter or set aside any provision of the Constitution or the by-laws enacted by virtue of the Con-

stitution, instead of a temporary suspension thereof, then I think the position that the gentleman takes would be tenable, but where the purport of the resolution is merely for saving the time of the Association, I do not think it is. We are not seeking to alter or amend an Article of the Constitution. The resolution is not seeking to alter or amend a by-law enacted under the Constitution. It is seeking merely for a temporary suspension of the rules in order to save the time of the Association. Now, Mr. President, there is no provision in our by-laws which relates to a suspension of the rules or the by-laws. We have got to go back to the general parliamentary rule that governs all assemblies, and that rule is that by a two-thirds vote of any Association or assembly the rules can be suspended for any purpose, when it is not the object to set aside or annul that provision of the Constitution or by-laws, and that not being the object of this resolution, I call attention to the fact. Now, so far as I am concerned personally, I think if there is a dissenting vote, that the gentleman who offered a resolution of that kind or character will withdraw it in order that the Association may proceed regularly and in conformity with the established precedent.

Col. Lawton: I would like to ask if there be a member of the Association who desires to cast a negative ballot against one of these names, how can he do so if this motion is carried by a two-thirds vote?

Mr. Battle: Mr. President, I will answer the question in the language of the Constitution, that three-quarters of the members present can set aside that provision of the Constitution.

Col. Lawton: I think the gentleman fails to see the distinction. If a two-thirds or three-quarters vote of the Association can suspend the rule providing for the election of members and allow the Secretary to cast the vote for the Association, then that will interfere seriously with the provision that five negative votes can prevent the election of any one to membership. As long as that is the rule, we ought to stand by it and vote for these names separately. I do not understand that any one

has any objection to any of the names suggested, but we are establishing a dangerous precedent. While there is no personal element in this matter, let us be careful, Mr. Chairman, that we do not in the future regret having made this precedent. I beg to differ with the gentleman with reference to the general parliamentary law. The rule of parliamentary law is that the rules can only be suspended by unanimous consent in the absence of a provision of the Constitution to the contrary.

Mr. Battle: I agree very largely with the position, but think that any Association that has the right to adopt a Constitution or to adopt a by-law by virtue of that Constitution, has the right to amend or abrogate it. Now when the rule goes ahead and provides what number of votes is necessary to do that, then that settles the question. This Constitution provides that a three-fourths vote may do it. I entirely agree with Mr. Lawton when he says that the question ought to be settled, and I am perfectly willing to settle it by saying that when there is a dissenting vote it can't be done.

Mr. Terrell: It may not be in strict order, but I move we take one vote on all the candidates at the same time, and, then, if there are five negative votes, we can vote on them separately.

The President: The Chair thinks this can be done.

The Secretary: There is no second to the motion.

Mr. Lamar: Mr. Chairman, it is fortunate that the question has at last been raised, and that we must now make a precedent to be followed in the future. Unfortunately, we have, in the past, absolutely disregarded the Constitution and have proceeded upon the idea that unanimous consent would authorize the Secretary to cast the vote of the Association. We have thereby nullified the provision, which was intended to prevent a disclosure of the secrets of the ballot box.

Mr. Hardwick: In a sovereign body cannot unanimous consent be given without establishing any precedent?

Mr. Lamar: Ordinarily, yes. But a different question might arise where the rule is intended to protect each member who

might not want to indicate his position by objecting. Objection would disclose his position and deprive him of the secrecy which the ballot box was intended to protect.

Mr. Ellis: I make the point of order that the request for unanimous consent is not debatable.

The President: I sustain the point of order, but will allow Mr. Lamar to proceed.

Mr. Lamar: I thank the Chair, but do not desire to discuss the matter further than to say that we ought, now that the question is up, to fix a precedent. We have the rule already.

The President: That the Association may understand the matter that is before it, and the rulings of the Chair, the Chair desires to say that Judge Van Epps made a motion to suspend the rule of this Association which requires that each candidate for membership in this Association shall be elected by ballot. The Chair was proceeding to put that motion when a question was raised that that could not be done by a two-thirds vote. The decision of the Chair was appealed from by Col. Lawton. Pending that appeal Judge Van Epps asked that his original motion be withdrawn. The Chair will put the motion of Judge Van Epps to withdraw his original motion. Is there any objection to that? I hear none and the motion is withdrawn.

Mr. Goetchius: I think that Col. Lawton and Mr. Lamar and the other gentlemen that have spoken are right in their contentions. The objection is that we don't want to establish a precedent. I make this motion: That we have this election according to the rule by ballot for one of those names, and, after that is done, we can follow the old precedent to elect the remainder of the names by letting the Secretary cast the ballot. I am in favor of every one of them, and will so vote, and will stand by my brother Lamar.

The President: The Chair will hold, Mr. Goetchius, that a motion is not necessary, because the by-laws already provide the manner of election.

Mr. Ellis: I make the point of order, Mr. President, that that motion is out of order. If the by-law provides for the man-

ner of election, we have got to follow it, unless a motion is made to suspend the by-laws.

The President: The Chair will put the motion, but thinks it unnecessary, as the manner of election is provided for by the by-laws.

Judge Hammond: May I make an inquiry? I do so for the purpose of gaining information, hoping that thereby we may gain a little time. I wish to know whether it would be necessary for every member of the Association present to vote in order that a member may be elected.

The President: The by-laws provide that where there are as many as thirty present a member can be elected. The Chair knows of no rule that compels a member to vote, but if there are thirty present the election can be proceeded with.

Judge Hammond: I want to make this suggestion: If there really is no objection to any one of these gentlemen, then it isn't necessary for everybody to vote.

The President: The next business in order is the election of members. The Secretary will prepare the ballots and proceed with the election.

Mr. Hardwick: I rise for information. Do we vote for all at once?

The President: The recollection of the Chair is that you vote for one at a time unless they are from the same county, in which event you can vote for two or more at the same time. In order to facilitate matters, the Chair will appoint Mr. Peabody and Col. Harrison to count the votes.

The election was then gone into and the following members elected:

J. D. Boyd, Griffin; J. J. Flint, Griffin; Arthur Gray Powell, Blakely; A. M. Raines, Dawson; I. T. Irwin, Washington; Minter Wimberly, Macon; J. C. Cook, Columbus; T. L. Bowden, Columbus; J. L. Travis, Atlanta; Arthur Greer, West Point.

Mr. Harrison: Mr. President, I desire to state that immediately after the adjournment of the morning session the newly

elected members of the Association will find the Treasurer in this place, where he will give to them such attention as under the by-laws they may need.

Judge Atkinson: On yesterday the Committee on Legal Education and Admission to the Bar obtained leave of the Association to make its report this morning. I don't know what the order of business is for the day, but I rise to inquire whether it is the pleasure of the Association to hear that report now.

The President: The Chair will state that the program arranged by the Executive Committee and presented to the President is as follows: (Reading the program).

Judge Atkinson: My understanding, sir, on yesterday was that the report of this Committee to which I refer was to have been submitted this morning the first thing, and it was for that reason I rose to inquire whether or not the Executive Committee had the authority to dispense with the order of business which had been fixed by the Association.

Mr. Harrison: I think the gentleman is mistaken as a matter of fact. The Committee did not understand that that order had been fixed by the Association, but that the whole subject-matter of the program had been referred back to the Executive Committee.

Judge Atkinson: I was under the impression that express leave was granted to us to file this report this morning.

The President: The Chair will ask the Secretary to request the stenographer to turn to the proceedings of yesterday.

Judge Atkinson: That isn't necessary.

Mr. Dessau: Mr. Chairman, in accordance with the custom which has prevailed, and which is in harmony with our Constitution and by-laws, I move that the usual Committee of five be appointed by the Chair to report to this Convention nominations of officers for this Association for the ensuing year, and that this committee be instructed to report those nominations on the opening of the meeting to-morrow morning.

Mr. Harrison: I second the motion.*

Motion unanimously adopted.

The President: The first paper in order is by Hon. W. A. Wimbish entitled "Ancillary Jurisdiction of the Federal Courts."

Mr. Wimbish presented the paper. (See Appendix G.)

The President: Next is "The Bible in the Lawyer's Library," by Mr. J. H. Merrill.

Mr. Merrill: Mr. President and Gentlemen of the Bar Association: I am much embarrassed at having to read my paper after the comprehensive and scholarly treatment of the same subject by our President, and the forceful allusions along the same line by our distinguished members, Judge Van Epps and Col. Black. But as I can call my typewriter to clear me of the charge of plagiarism, and your kindness will overlook the to me disadvantageous comparison, I shall give myself wholly over to the enjoyment of being in such noble company.

So much upon this subject at one meeting should encourage us to hope that in the near future there will not be such hearty applause and general approval of the sentiment expressed by the man who upon reading the epitaph "Here lies a lawyer and an honest man," said, "Well, that is the first time I ever knew of two men being buried in one grave."

(For paper see Appendix H.)

The President: The next paper is by Mr. Roland Ellis.

Mr. Ellis read a paper entitled "Criticism of Courts." (See Appendix I.)

Mr. Ellis: I desire to offer the following resolutions:

Resolved, 1st. The Georgia Bar Association has heard with pride and pleasure of the appointment of Hon. James H. Blount, Jr., one of its members and one of its former Secretaries, to the position of a Circuit Judgeship under the United States Government in the Philippines.

2d. That the appointment was deserved by reason of the character of the man, by reason of his services to his country as a soldier, and by reason of his legal attainments.

3d. This Association wishes for Judge Blount much happiness, usefulness and success in his far-off home, and now extends to him a cordial invitation to be present with the Association at its next annual convention.

4th. The Secretary will forward to Judge James H. Blount, Jr., a certified copy of these resolutions to Manila, Philippine Islands.

The resolutions were adopted.

The President: The Chair will announce as the Nominating Committee the following gentlemen:

Mr. Washington Dessau, Chairman.

Mr. J. R. Lamar.

Mr. Roland Ellis.

Mr. W. E. Steed.

Mr. J. H. Merrill.

A motion to adjourn was then carried.

SECOND DAY'S PROCEEDINGS—AFTERNOON SESSION.

Meeting called to order at 3:30 by the President.

The Secretary: Mr. Chairman, before beginning the regular program for the afternoon session, I wish to make an explanation. The name of Mr. Walter E. Steed, of Butler, has been considered by the Executive Committee and recommended for membership, but on the list that was handed to the Chairman this morning in some way the name was omitted. The name is now before the Association with the favorable recommendation of the Executive Committee. The Committee has also passed favorably on the name of Mr. L. C. Russell, of Winder. I trust we can elect both of these gentlemen at this time.

After ballot was had both gentlemen were declared unanimously elected to membership.

The President: The next business in order is the reading of a paper by Mr. Shepard Bryan, on "Defects in the Law of Georgia Regulating Private Corporations."

Mr. Bryan read the paper. (See Appendix J.)

Col. Lawton: Is a motion in reference to that paper in order now? If so, I move that the matter be referred to the Committee on Jurisprudence and Law Reform, with the request that

they will report by bill to the next session of the Association, with a view to having it presented to the Georgia Legislature.

Mr. Smith: I second the motion.

Motion adopted.

The President: We will now have a paper by Hon. C. A. Turner, "The Six Characters in the Trial of Causes."

Mr. Turner presented the paper. (See Appendix K.)

The President: Our next business is the report of the Committee on Legal Education through its Chairman, Judge Spencer R. Atkinson.

Judge Atkinson: Mr. President and Gentlemen of the Association: Your Committee on Legal Education and Admission to the Bar makes the following report:

Save only as hereinafter recommended your Committee approves the present law of the State regulating the subject of Legal Education and Admission to the Bar.

It recommends,

First. That the provisions of the present law which enjoin upon the courts the duty of admitting to the Bar graduates of Law Schools in this State upon presentation of their diplomas be repealed.

Second. That the provisions of the present law be amended so that the Superior Courts of this State shall be authorized to admit to the Bar without further examination, upon proof of good moral character and presentation of their diplomas, the graduates of those Law Schools, the graduates of which have been heretofore specially authorized to be admitted to practice law upon presentation of their diplomas, provided such Law Schools shall require a two-years course under a curriculum to be approved by the State Board of Legal Examiners.

SPENCER R. ATKINSON, Chairman.

R. B. RUSSELL.

THOS. J. CHAPPELL.

It is proper, I presume, Mr. Chairman and gentlemen, that in submitting this report for your approval, I should call attention to a condition which exists under the present law which had altogether escaped my notice up to the time I gave it a careful examination within a very recent time. The matter that I speak of is this: That under the present law in Georgia, which undertakes to state the qualifications of members of the Bar, the Circuit Courts are deprived of jurisdiction to inquire as to the qual-

ification of a man who proposes to practice law before them. Possibly through inadvertence, certainly not otherwise, the Legislature, in framing the present law which regulates the whole subject of admission to the Bar and legal education, has absolutely stricken down the independence of the Courts as representing a co-ordinate branch of this government in so far as the influence of the Courts may be exercised in regulating the conduct of those who claim the privilege of practicing before them. I desire to call attention to these provisions of the law, in order that the gentlemen of the Bar here who have not probably critically read the provision of this Statute may see that your Committee speaks by the card. There is one section of the Code belonging to that chapter which regulates the subject of admission to the Bar, which provides:

"None of the preceding requirements are applicable to any graduate of the Law Department of the University of Georgia, the Law School of Mercer University, the Law Department of Emory College, or the Atlanta Law School, but upon presentation of a diploma of graduation from either of these institutions, such graduate shall be authorized to plead and practice in all the Courts of this State, without further examination, upon payment of the usual fees, and upon taking the oath and receiving the license prescribed by law. And the judges of the Superior Courts in their respective circuits are authorized in their discretion to hold special terms of said Courts for the purpose of admitting to the Bar any person or persons who may have a diploma from either of such institutions."

If, according to the first provision of this Statute, it is the privilege of the graduates of any of these institutions of learning to appear in any Court upon presentation of his diploma, then why go through the farce of having him admitted to the Bar?

When the Act of 1898 was passed, which undertook to regulate in a rational and comprehensive way the whole subject of legal admissions, there was one exception which, in my judgment, was fatal to the institution of a proper system of legal examination in Georgia. That exception is embodied in section 3 of this Act. It provides, after outlining a system perfect in its symmetry:

"Be it further enacted, That no person shall be admitted to the practice of law in this State except under the examination herein provided for; but this Act shall not apply to those who have received diplomas from any Law School of this State authorized to issue diplomas to students of law, nor shall this Act apply to those who have been admitted to the practice of law in other States."

If the Code left anything undone which was necessary to strike down absolutely the independence of the Bar and of the Courts, that omission was supplied by this provision in section 3 of this Act. Under previous legislation the great institutions of learning throughout the State—the University of Georgia, Mercer University, the Law School at Oxford and the Atlanta Law School—were permitted to graduate law students, but under the provisions of this section, Mr. Chairman and gentlemen, the student of any law school can be admitted. The folly of it will be appreciated when you come to realize that under our system of creating corporations, it is the simplest possible matter to create an educational institution and endow it with the right and privilege of issuing diplomas of any kind. Why three justices of the peace, or three laymen who know nothing about the law, may organize an educational institution, call it a law school, incorporate it for the purpose of teaching the law, and they may issue a diploma to one of its graduates, and upon the strength of that diploma the judge of the Superior Court is compelled to admit to the Bar the graduate of such an institution. Your Committee, therefore, has recommended that that provision of this law, pernicious as the same is in its consequences, should be repealed. The Committee has likewise recommended what, in its opinion, would be a proper provision, and that is to the effect that certain institutions of learning—those that now have a recognized standing in Georgia as institutions of learning and those that may hereafter receive recognition through the Acts of the Legislature—may be authorized to grant these diplomas, and to permit the graduates of these institutions to be admitted upon presentation of the diplomas, provided they shall have taken the course prescribed by the Board of Legal Examiners. My opin-

ion, Mr. Chairman and gentlemen, is that if you would secure a high moral standard at the Bar, you must make the man who comes to the Bar feel that he is answerable to the Bar and to the Court for the propriety of his conduct. You have got to educate him under the proper conditions if you would endue him with a sentiment of love and veneration for the institutions of justice throughout the country. Personally, I desire to say I yield my own convictions in regard to this matter to the superior wisdom of this Committee. Personally, I would require every man who seeks to practice law in Georgia to go before the State Board of Legal Examiners and submit to the examination which the law prescribes for them. In my opinion that would be the proper course, and the one course that will commend itself ultimately to the judgment of the profession. Deferring, as I have done, to the wisdom of my brethren on the Committee, I join most heartily in these recommendations, and move the adoption of this report and the reference of it to the Legislative Committee of this body. (Applause.)

The President: Is there a second to the motion?

Mr. Lamar: Mr. Chairman, I presume if the matter is to be reported to the Legislature, it will be asked to adopt some measures along the lines suggested. By some it is insisted that if those who have graduated should be required to come before the Board, it would be unfair to make them pay the fee exacted of other applicants. This is a fair criticism, and if they must be re-examined, applicants with a diploma should not be expected to pay another fee. As to the course of study, you must bear in mind that the Code only requires the applicant to be examined on the Common Law, the Constitution, the Code, Evidence, Pleading and Practice, Equity and the Criminal Law. The Rules now only admit of one day's examination, and comparatively few questions on each of these branches necessarily make a larger number in the aggregate. The Board is given no discretion as to the subjects on which the applicant is to be examined. The present law was framed in view of an oral examination in open Court, and not with the expectation of the

applicant having to submit to a written examination to be finished at one sitting. The course of study ought to be modified, but I do not think the Board of Examiners ought to be allowed to fix a course for the University of Georgia, or any other sister college. The faculties would properly, I think, object to any such supervision. If such a power is to be lodged anywhere, it would, with great propriety, be with the Supreme Court.

Mr. Meldrim: I hardly think that there will be any conflict on the subject. The report which I will make a little later bears somewhat on the same question as that now before the Association, and I only rise now to tell this body what is the present condition of Law School education at the University. Those of us who have been taking a very active part in the matter of highly elevated Law School education have finally succeeded in doing three things: First, in fixing a full two-years' course at the University. This has been determined and goes into effect with the next session in September—two full academic years. The second thing is that no student can enter the Law School of the University until he has stood an examination satisfactory to the Law School faculty in English. So far as our State institution is concerned, the day is passed when graduates from that school will go out unable to read, write or speak the English language. The third is that the matriculate must be eighteen years of age, at least, before he can be admitted. Now that's the long step which the Board of Trustees has recently taken, and which the faculty of the Law School has approved. The curriculum has been fixed, and I believe that curriculum is entirely satisfactory to the Board of Law Examiners. Now then, if that is true, is there any necessity for any further action by this body on the subject? I am assuming now that the curriculum adopted by the Law School faculty is satisfactory to the Law Examiners. I take it for granted that the schools at Mercer and at Oxford and at Athens and at Atlanta are in hearty accord with the work of the Law Examiners. It is all part of one work. Now if it is true that our schools will keep up, as I have no doubt they will,

their examinations to a point of excellence, and the curricula adopted by the Law Schools is satisfactory to your Board, then is there anything further to be reached? If I understand Mr. Lamar, he does not move an amendment to this report. Now is there any necessity, in order to perfect our work, that it should be amended in any particular? for I am perfectly free, recognizing the fact that he and Mr. Dessau are both Law Examiners and present to move the amendment if it be thought necessary. For the present I do not see the necessity of it, and I rose, therefore, to say in reply to my friend, that if I can do anything to co-operate in behalf of the Law School of the University, or the Examiners in the work in which they are engaged, I stand ready to do so.

Mr. Lamar: As I understand it, Mr. Atkinson's report would be sent forward as the recommendation of this body. Does that provide that the Board will fix the curriculum?

Mr. Meldrim: That this Board will fix the curriculum?

Mr. Lamar: Approve the curriculum that is fixed or shall hereafter be fixed by any Law School? Now it has been suggested to me that it would be far better to let that curriculum be approved by the Supreme Court than by the Board, and it seems to me that we ought not to require the applicant to pay another fee, which is one of the serious objections which has been made, and which I think is a fair one.

Mr. Chappell: I desire to say as a member of the Committee, that if the motion proposed by Mr. Lamar is adopted it will defeat the whole purpose.

Judge Atkinson: I think if the members of the Association will allow me to read the report again they will probably better understand what it is.

The President: The Chairman will read the report.

Judge Atkinson read the report.

Mr. Chappell: Mr. President, as I stated, the amendment as proposed by Mr. Lamar, if adopted, will defeat the whole purpose sought to be accomplished by the Committee. We now have one uniform set of questions that are put to applicants

throughout the entire State. This remedied one of the evils that existed before that rule was adopted, for, prior to that time, we had a loose way of examination in open Court, and an applicant might be admitted at one particular term in one particular circuit, while possibly in an adjoining circuit or at another term of Court the same applicant could not be admitted. Now it is uniform so far as admission through the Courts is concerned. It is the opinion of the Committee that it should be uniform as regards the Colleges or the Law Schools through which the student may pass. The law as it now is provides that the graduates of any Law School shall be admitted to practice upon taking the oath and paying the fee, without any examination whatsoever. Prior to the present law now in operation only those graduates holding diplomas from the University of Georgia, from Mercer and from Oxford were entitled to practice, but now they have thrown the doors open to any Law School, and the Chairman of the Committee has called attention to the fact that under our statute in regard to special educational institutions they may be incorporated upon the petition of any three persons, and there is absolutely no inquiry as to the fitness of those three applicants for a charter—as to their fitness for the particular business they propose to carry on. We have four Law Schools that are in competition with each other. Now one of the trustees of the University of Georgia here has called attention to the fact that in the University they have added a second year to the law course, and that the curriculum is all that can be desired. Very well, so far as the University is concerned, but he does not speak for the other three Universities in Georgia that grant diplomas. Suppose the University Law School insists upon a two-years course, and the other Law Schools propose to give diplomas that answer the same purpose on a one-year course, how can the University of Georgia compete with them? The rule should be uniform. The curriculum should be the same, and your Committee recommend that that Board to which has been entrusted this particular matter should be charged with the duty not of prescribing the course, but of

approving it. In other words, when a curriculum has been made out by these various Law Schools, let it be submitted to this Board of Examiners, and let them say whether a student who has gone through that course and received a diploma is competent to practice law. That is the recommendation of the Committee, and it will answer the purpose, and meet the evils of the existing law. Now as to the other objection—the matter of the fee for examination. The fee is so small that I think it is entirely immaterial. I don't think there ought to be any difference made. You cannot say as a matter of fact that because a man graduates from one of these Law Schools he has been put to greater expense than one who has studied in a law office.

Judge Longley: Mr. President, I want to say a word or two about this matter. The recommendation offered by the Committee is a two-years course in these Law Schools. They don't propose to put any such burden on the young man that enters the law office. He may prepare himself in six months and measure up fully to any questions propounded by this Committee. I object to it, because it is in my judgment a thrust at these institutions. I do it for another reason: It is not treating the Law Schools with that sort of courtesy due them to say that these Examiners shall establish a certain curriculum when the Code does that. The law already provides that before they can be admitted to practice in this State they must undergo an examination in the principles of the common and statute law of Georgia, in equity, pleading and practice, the Code of Georgia, the Constitution of the State and of the United States and the rules of court. Now that is the curriculum the law provides already, and that's the curriculum that's enforced in these Law Schools. Now they want to appoint a Committee with the right to say to the University at Athens, you must examine along this line, or to Mercer University, you must examine along this line, when the law itself provides for the courses that must be taken in the various branches of the law. Therefore, I am opposed to the proviso *in toto* and move to strike that part of it. That would involve also the first section,

but I will make my motion apply only to that part of the report that refers to allowing this Board to suggest the course. I am willing to adopt a two-years course, but my motion is as to investing this Committee with authority to establish a curriculum.

Mr. Meldrim: I don't care to trespass on the time of the Association, but I hope the motion of my friend will not prevail. I take the liberty of speaking in behalf of the Law School of the University, and the reason why I trust the motion will not prevail is this: It seems to me that the best work that this Bar Association has done has been in the encouragement of higher education as a preliminary to admission to the bar. The outgrowth of that, and the result of the reports that have been made from time to time, has been the appointment of this Board of Law Examiners. The Bar of the State looks to that body of three lawyers not only to fix a standard, but to see that we live up to it, and the Law School for which I speak on this occasion will be only too happy to have that Board of Examiners, or the Supreme Court, as the case may be, consider, revise and approve the curriculum.

I would go so far as to say that no man should be admitted to practice law in Georgia unless he stood absolutely the examination prescribed by that Committee. It's a poor school indeed, sirs, whose graduates would go forth to practice law who would be unable to stand the examination of the Board of Examiners. I for one am willing to trust those three strong Georgia lawyers, and feel that as long as the Supreme Court will create a body of that class admission to the Bar in Georgia is fairly safe.

Judge Longley: Don't you think that the adoption of this recommendation would have the effect of discouraging these Law Schools at the Universities?

Mr. Meldrim: I have, as some of you know, given a great deal of attention to the Law School work of the University for a number of years. The number of students during the past year was between 80 and 100. The probabilities are that the

adoption of the two-years course and the examination which we have prescribed in English will bring the Law School attendance down to 25 or 30, and in spite of it, I want to say it to his credit, that Judge Howell Cobb, when the discussion arose as to how we could stand that drain upon the limited finances of the school, that man, with a degree of heroism that was almost sublime, said, "So far as my compensation goes I forget it—let that go."

The University Law School is endeavoring to take its position in the front rank of the Law Schools of the country, and I cannot help saying, Mr. Chairman, that during the meeting of the American Bar Association, where the great schools of the country were represented, the Georgia representation was excluded upon the ground that no Law School whose course is less than two years is worthy to be admitted into the session of the American Bar; and I have found this further fact, that the great schools in the country which require the most in scholarship are the schools that are crowded with students to-day. The time has passed when cheap work pays, whether it is in the workshop or at the Bar, and I do trust that this body of lawyers will sustain the trustees and the law faculty of their own University in this effort we are making to upbuild legal education in the State; and hence it is that I trust my friend will withdraw his motion to strike out that provision, for, speaking in behalf of that school, I wish the Georgia lawyers to understand that the curriculum they may see proper to adopt will be carried out to the furthest degree. Speaking for myself, I would rather have these three men examine that curriculum. I would rather have them say that the curriculum is not high enough and put it higher, than to refer it to the busy Judges of the Supreme Court. Every one knows my respect for that body, but, at the same time, I believe the work will be better done by the trained lawyers who compose this Board of Law Examiners. I repeat that I want them to investigate the curriculum of all the Law Schools, and when that curriculum comes below the standard that they think ought to exist to state to the faculty, "Your

curriculum is not high enough." I think there ought to be no difference between us at all. The Law Schools, the Board of Examiners and every good lawyer, or man that hopes to be a good lawyer, should unite in this good work.

Mr. Miller: I offer as a substitute to the report that the graduates of all Law Schools be required to stand the examination before they can be admitted to the Bar in this State.

Col. Lawton: I second the motion.

The President: The Chair admits that it is a little rusty in parliamentary law. My recollection is that the motion to refer takes precedence of the motion to amend, and, if I am correct in that, the question is upon the motion to refer.

Mr. Chappell: I didn't think that there was a motion to refer.

The President: Judge Atkinson, as the Chair understood it, made a motion to refer.

Mr. Meldrim: Mr. Miller, would you have any objection to requiring a two-years course?

Mr. Miller: None at all, sir. I think it would be best to enlarge the course to two, three or four years in your discretion. My motion was simply a substitute to the adoption of this report—that the graduates of all Law Schools be required to stand the examination before they can be admitted to the Bar in this State.

Mr. Spalding: I think that that substitute would be an injustice to the colleges.

Mr. Miller: I rise to a point of order. I don't think a substitute is debatable.

The President: The Chair overrules the point.

Mr. Spalding: I don't think the substitute ought to prevail, because I think that substitute works an injustice to the colleges. It takes away all inducement and all incentive for a young man to attend college.

The reason that the law was adopted allowing a graduate of the Law School to be admitted without examination was in order to foster and encourage the Law Schools. Now when you

take away the incentive and the encouragement of the Law School, as Judge Longley says, you will find the young fellow attempting to help himself in the office, and he will say that there is no use in incurring the expense of going to a Law School. Now, I think we have gone far enough when we have prescribed, in the language of the resolution as recommended, that a two-years course in a Law School shall be a prerequisite before a student can be admitted upon presentation of his diploma, and that the curriculum shall be approved by this Board of Examiners. When you go a step further and say that no graduate of a Law School shall be admitted upon presentation of his diploma without standing the examination, you have taken away all incentive that the Law Schools can offer. I am perfectly frank to say that I believe a young man who presents his diploma from a Law School after a two-years course, under a curriculum approved by this Board, will be much better equipped than to have him study in the office, and it will have a tendency, and a very strong tendency, to raise the standard of the Bar. I respectfully suggest that the report that has been read by the Chairman of the Committee is the best suggestion that has come before the body yet—that is, that we adopt the curriculum approved by these gentlemen, require a two-years course, limit it to these four colleges that have the right to issue diplomas, and that upon presentation of such diploma they shall be admitted.

Mr. Miller: Do you think that a student who takes this course would have any difficulty in standing the examination?

Mr. Spalding: If the amendment is adopted we take away from the Law School all inducement and all encouragement that they offer a young man to attend them.

Mr. Arnold: I want to say just a word about this matter. I can't understand the position that my friend Spalding takes in it. He says that the Law School fits a man for practice. He says that the man who goes there has a tremendous advantage over the student in the lawyer's office. Why can't they, then, stand the examination with much less trouble than the student

from the office? If they are all examined it will prevent such a deluge of yearlings every year. The Supreme Court has appointed a Committee of Law Examiners to examine applicants for admission to the Bar, and I think every applicant, whether he has taken a course in one of the Law Schools or not, ought to be compelled to undergo that examination.

Why should the young man studying in an office be handicapped after burning the midnight oil and studying without any aid or without any money? He can't go to a Law School. He can't afford it. Why should you, I say, put him up for an examination when these men with all the advantages don't have to stand any?

Col. Lawton: I seconded Mr. Miller's motion, but I desire to make a few remarks in regard to it. I am one of those who believe that every man who offers himself for admission to the Bar ought to be required to stand the examination, but it seems to me that we can adopt this report as it stands here now without amendment, and, if we do this we are making a long step forward, and I, therefore, move to lay the substitute on the table.

The President: The first question is on the motion to lay the substitute on the table.

Motion carried.

Judge Hammond: I want to say just a word. If we can have first-class Law School in Georgia, and have them well-officered, it is a great deal better, gentlemen of the Association, to have legal education in a Law School than to have it in a lawyer's office, and, in my humble judgment, we ought to get high enough up to look at this matter from the standpoint of what is the best thing for the future lawyer in this State. We want to give him the best education that he can get, and if he can get a better education in a well-equipped, well-officered Law School than he can in a lawyer's office, then we ought to encourage legal education by the Law Schools. My observation of studying in a lawyer's office—although I was educated in one myself—has been that a man doesn't get the best op-

portunities for a legal education. The best lawyers and the brightest lawyers don't have time to give much attention to the young man who is studying law in the lawyer's office. What we ought to do, in my judgment, is to encourage and foster the Law Schools of this State. We ought to require them to give a two-years course; we ought to require them to submit the curriculum to the proper authorities appointed by the State of Georgia, and let the State of Georgia say whether or not they have been or are giving proper instruction for admission to the Bar in the State.

Judge Bleckley: In answer to the question that seems to be troubling my young brother, Reuben Arnold, I want to draw the attention of this distinguished body to the fact that there are two methods of legal education—one is culture and the other is cram. Culture is to be derived from the Law Schools. Cram will prepare one for the examination. The Law School will give general legal culture. The law office gives a sort of particular legal culture as compared with the school, and in the law office you can get prepared to stand a particular examination. When a man studies in a law office he is saved trouble by taking a sort of special course of study. He merely studies with reference to qualifying himself to answer particular questions. Now I will illustrate in this way: I suppose that almost any of you will admit that I certainly ought to be competent to practice law, yet I have not the slightest idea that I could undergo that examination without a course of study. I would have to answer the questions as well as I could, but I know that I should break down, and I think it would be the same way with most of us. I think we would utterly break down if we had to undergo that examination. Now we must recognize that there are two ways of preparing men for admission to the Bar. Let a man qualify himself to go through one of the doors, and don't make him turn back and go through the other one. If you make it necessary for the College student to stand the examination for admission you make him go through both doors, while the office student only has to pass through

one. I hope that will relieve Bro. Arnold's mind. It ought to whether it does or not.

Judge Atkinson: Mr. Chairman, before the question is put I want to make this suggestion: My motion is that this report be referred to the Committee on Legislation. I am advised that there is no such Committee. I move now that it be referred to the next Committee on Legal Education and Admission to the Bar. In order, sir, that it may be presented at the next session of the General Assembly, it ought to be referred to this same Committee, or adopted by the Association and referred to the next Committee?

The President: The amendment has been withdrawn. The question now is upon the motion of Judge Atkinson.

The motion was put and carried.

Motion to adjourn carried.

SECOND DAY'S PROCEEDINGS—EVENING SESSION.

The President called the meeting to order at 8:30 p. m.

The Secretary: Some may think that because to-morrow is the last day of the session the program will not be so good. In order to remove this impression, if it exists, I will read the program.

(Here the Secretary read the program.)

At the adjournment of the Association at one o'clock to-morrow, the barbecue kindly provided by our host will be had, to which all members of the Association are invited.

The President: Henry Grady was once asked why it was he could talk so well and so much. He replied that the reason was plain—that his father was an Irishman and his mother was a woman. I have often thought that our lady friends would make fine lawyers, in some respects—they can talk so well; but, if they should become lawyers, the plaintiff would certainly have the opening and conclusion—especially the concluding speech. Our venerable friend, Judge Bleckley, some years ago

read a paper on "Woman at the Bar." While under our Constitution a woman cannot be a member of the Bar of Georgia, yet we have induced one to come to the meeting of the Bar Association of Georgia. That is as near an approach to it as we can now have. She will give us her impressions of the Georgia lawyer, and I know that she will do it interestingly and well, for she is equally at home in the parlor or in preparing a brief for her honored husband or taking a case to the Supreme Court. I know that she can do this, because, having been associate counsel with her distinguished husband on one occasion, I know she did prepare the Bill of Exceptions, and she predicted with a good deal of accuracy the result of the suit, the prediction being that we would lose it. I want to tell you a secret—it's a political secret, and, if you tell it on me, I will declare I never said it. She's somewhat of a politician, too. She has had something to do with politics. The truth is she elected a Senator once for the Georgia Senate. It is generally supposed that her handsome and energetic husband was elected on account of his ability and amiableness and all that, but that's a mistake. He had pretty strong opposition, and what do you reckon he did—he took this bright little woman with him in a buggy and went around to interview the dear people, and when he failed to persuade them by his good looks and his eloquence, why she would reach down in the foot of her buggy and take out her violin, and would play something to suit the occasion. It might be "Billy in the Low Ground" or "William in the Valley," but it always suited. You know music hath charms, and by her charms and the charms of the music that she rendered her husband was elected overwhelmingly to the Georgia Senate. It affords me great pleasure to introduce to the Georgia Bar Association Mrs. J. Render Terrell. (Great applause.)

Amid frequent bursts of applause Mrs. Terrell read her paper. (See Appendix L.)

The President: It affords me great pleasure to introduce to the Georgia Bar Association Hon. Wm. L. Scruggs, who will now address us.

Mr. Scruggs's paper was on the subject of "The Evolution of American Citizenship." (See Appendix M.)

The President: We elected to membership in the Association this morning a gentleman who is known far and wide as one of the best story-tellers in the State. As it is still early, I am going to take the liberty of calling on him to give us something out of his abundant store, feeling sure the Association will enjoy a good story well told and knowing that Minter Wimberly, of Macon, never fails to interest. Mr. Wimberly can't we hear from you?

Mr. Wimberly:

Mr. President and Gentlemen of the Bar Association:

This is the first time that I have had the pleasure of attending a meeting of the Bar Association, and to my surprise I am suddenly called upon to say something to you, with the proviso that I must not talk about law, but say something that will interest you. This you will see at once is a very difficult task you have set before me.

The paper which I had prepared to be read to the Association, entitled "The Criticism of Courts," was read by my partner, Mr. Ellis. He having a better delivery than most members of the Bar Association, I allowed him to read the paper and get the credit of it. I came here to sit at the feet of the ancient and receive instruction in the law and in the ethics of the profession. Now, I am requested, since my paper has been read by one eloquent and learned in the law, to entertain the Association if I can.

I frankly admit that since my arrival I have been instructed in the law, and have derived especial entertainment and practical instruction as to the method of the successful conduct of cases in court by the paper read by one of the best lawyers and truest men in the State. I refer to the admirable paper read by the Honorable C. A. Turner of Macon, the subject being "The Six Characters Necessary in the Trial of Cases." This able paper was intensely interesting. It kept us on the *qui vive* until he had finished the last of the six characters. But I submit to the

Bar Association if I am not correct in the assertion that he omitted entirely to mention any necessity for arguing the law or the evidence in the case. This accounts for his wonderful success as a lawyer, both before the courts and the jury. I know it from a sad personal experience.

The last case that I tried with him was a municipal damage case, and in his entire argument before the court and the jury, he stuck to his text and avoided the law and the evidence. He shunned them both. He seemed to fear the law as a death-dealing Upas. It is sufficient to say that he, in my opinion, won his case without law or evidence and without any contention on his part as to law or evidence.

Mr. Turner says in effect that the best way to whip a case is to use ornate illustrations in the way of parables. He spoke a parable when he said that, because that is the way that he whipped me in the trial of the case of *Dannenberg v. The Mayor and Council of the City of Macon*. I am relying, however, upon that last bulwark of a lawyer, the Supreme Court, in this case, trusting that they will not decide the case on a parable, but will consider the law and the evidence.

Upon their decision depends the truth of whether my learned brother is correct as to the best six ways of winning a case. I never have been able to win in that way.

But, Mr. Chairman, I was requested by our honored secretary "not to mention law or evidence in my speech; that the Bar Association to a man was weary of the would-be learned dissertations," and he frankly admitted that he himself had been greatly bored, and that the Chief Justice of the Supreme Court personally had requested him, if it was possible, to break away from the apparently never-ending monotony of one essay after another, upon subjects that all had been familiar with from their boyhood up. Therefore, following his instructions, because I am afraid if I did not, I would be called down, and remembering that Mr. Turner said the best way to talk was by a parable or a story, I will try to entertain you if I can by telling a short story about a boy which reminds me of the fact that you seem to have had a sufficiency of law at least.

One of the finest men in Georgia, and I believe in the world, lives in Twiggs county. His name is Dudley M. Hughes. He is the soul of hospitality; his home is to the wayfarer, as well as to his friends, always open to anybody that comes. The veriest beggar receives such courteous treatment he departs feeling better with himself and believing that Dud Hughes was really glad to see him; and this comes from the fact that Dudley Hughes really is glad to see everybody, is happy to help everyone. He would, I believe, feed the whole world, if it passed by his house in single file, as long as the peach crop lasted or there was anything in the smoke-house, and then he would only stop for a time long enough to replenish his exhausted supplies.

But to the story. Some ten or fifteen miles below Dud Hughes's house, in the confines of Gum Swamp, there lived a very poor family. One morning just after breakfast the young hopeful of the family rode up in front of the house on the attenuated and jagged frame of an ancient grass-fed mule. The mule had on a blind bridle, a bear-grass collar; the boy, a shirt, a pair of Osnaburg pantaloons and one "gallus." His hair was sandy, his eyes pale blue; his bare legs were shrunk and small; his complexion was exceedingly sallow. His little body was very rotund, swell out. He looked like a clay-eater.

As he rested his rotund stomach on the high wethers of the mule and slid to the ground, he said:

"Good mornin', Mr. Hughes: Pa say he don't want ter bother you. He jes' lay by his crap; his draff at store is run out, an' ther ain't a bit o' meat in the house; an' Mer's got the misery, an' the chillun is all sick, an' Pa's had a shakin' ager ever since yestiddy; an' he want ter borrey fo' or five pounds o' meat till he gins his first bale."

Dud Hughes walked quickly down from the vine-clad portico, and as he stood under the magnolia tree with his hand upon the opening gate, he said:

"Hitch your mule, Johnnie, and come right in the house and have some breakfast. I know you haven't had any."

Johnnie replied, "Naow. I lef' home 'fo' light, an' been er

comin' ever since, but I ain't hongray. I don't want nothin', Mr. Hughes. I got ter hurry back, for the chillun wus all cryin' for vittels when I lef.'"

"That is all right, Johnnie. Come on in and I will have the cook fix some breakfast for you while they are getting the meat."

He took Johnnie by the hand and led him in, and sat him down to the table, snowy with white linen. When Johnnie sat down, he helped him to a large thick slice of country fried ham and brown gravy, and Johnnie split open a large brown butter-milk biscuit, which, with a soft sigh of intense satisfaction, he swabbed in the red-brown gravy and turned it over and mashed the brown crust so that it also could absorb the delicious brown gravy.

Johnnie was sitting very close to the table when he began, and as he finished one slice of ham, Dudley Hughes, knowing the boy's embarrassment, without asking him, pressed another slice of ham and other biscuits upon him, talking to him all the while, so that the boy's timidity gradually wore away, and he resigned himself to the comfort of the first good square meal in months. He was hungry, and hungry for the want of good substantial food, and Dud Hughes saw it, and his heart softened to the boy, and he continued to press more ham and more biscuit upon him, and poor little Johnnie continued to eat. Each time he split his biscuit and swabbed it in the gravy, and as his hunger became satisfied, he dallied with the food and sighed with pleasure and enjoyed it from the mere sense of possession, in knowing that it was his and he could eat as much as he wanted, and he could leave something on his plate, not for manners but for want of space. The more he ate, the more he contained; the more he contained, the fuller he got, and the fuller he got, the more he ate, etc., etc., and the rounder he grew, until gradually, by the internal expansive force of his own rotund little body, he shoved himself farther and farther away from the table, until he dropped crumbs upon his round little front and discontinued his eating.

After three or four cups of coffee and his thirteenth biscuit, he gave a sigh of relief and folded his hands across his round little body, and Dudley Hughes with hospitable insistence placed another slice of ham on his plate, pouring out a fresh cup of fragrant coffee made golden with pure cream, and urged him to eat more. The aroma of the coffee had lost its fragrance with Johnnie. The ham, the biscuit, the russet brown gravy no longer tempted him. Nature's vacuum had been filled to repletion, and he declined with a sigh, saying:

"Naow thank you, Mr. Hughes. I can't eat no more. I've had a God's sufficient." (Laughter and applause.)

(In response to an encore Mr. Wimberly, by request, gave an account of a most spirited debate at New Hope Church, between two of our newly emancipated colored citizens, one choosing the *nom de guerre*, Mr. Gus Bacon, the other, Mr. Wash Dessau. He was again called for and responded with one of Uncle Rastus's sermons. It is greatly to be regretted that our literature could not be embellished with these stories, but negro dialect from the inimitable Minter Wimberly proved too much for our efficient stenographer.—Secretary.)

THIRD DAY'S PROCEEDINGS—MORNING SESSION.

Meeting called to order by the President at 9:30 a. m.

The Secretary: Mr. Chairman, I have the name of a gentleman who has been passed on favorably by the Executive Committee for membership, Hon. W. C. Adamson, Congressman from this District. I move that we proceed to ballot on the name of Mr. Adamson.

Motion carried, and Mr. Adamson was unanimously elected.

Mr. Burton Smith: It has been already announced that Mr. Lucius Q. C. Lamar, who was to have addressed us at this meeting, is detained in Cuba by official duties, and hence cannot be with us. Mr. Lamar writes as follows:

HOTEL TELÉGRAFO, HAVANA, June 24, 1901.

Orville A. Park, Esq., *Secretary Georgia State Bar Association, Macon, Ga.*

MY DEAR SIR:—It is with deep regret that I am obliged to inform you, and through you the Executive Committee of the State Bar Association, that I shall not be able to fulfill my engagement to deliver my address upon the "Development and Present Status of the Law in Cuba" at the annual meeting of the Association on July 3d next. None but reasons of a most imperative nature would prevent my fulfilling this engagement. I have just received at this late hour cable notices from Washington making it necessary for me to remain in Havana several weeks longer. Please accept an expression of my sincere regret, and convey a similar expression to the Executive Committee and the Association.

I had already prepared the paper which I had intended to read, and now enclose the same herewith, to the end that, if you and the Executive Committee deem it proper, it may be read to the Association either by yourself or some one chosen for that purpose.

With renewed expression of my thanks for your valued invitation, and my deep regret at not being able to meet you and the members of the Association this year, I remain, with best wishes for the success of the meeting,

Very truly yours,

LUCIUS Q. O. LAMAR.

We all, I am sure, very much regret Mr. Lamar's absence. I move that our regrets be formally tendered him, and our thanks for his thoughtful kindness in forwarding us the manuscript of his most excellent address, which will be published in our annual report.

Judge Sweat: I second the motion.

Motion was put and unanimously adopted.

(For the address see Appendix N.)

The President: The next business in order is the report of the Nominating Committee by its Chairman, Mr. Dessau.

Mr. Dessau:

To the Georgia Bar Association:

Mr. President and Gentlemen:—The Committee appointed by you upon yesterday to report this morning at the opening of the session the names of officers for this Association for the ensuing year beg leave to submit the following:

For President—C. E. Battle, Columbus.

First Vice-President—Burton Smith, Atlanta.

Second Vice-President—P. W. Meldrim, Savannah.

Third Vice-President—A. P. Persons, Talbotton.

Fourth Vice President—T. W. Hardwick, Sandersville.

Fifth Vice-President—W. C. Bunn, Cedartown.

EXECUTIVE COMMITTEE:—

A. R. Lawton, Savannah, Chairman.

T. A. Hammond, Atlanta.

Lloyd Cleveland, Griffin.

J. Render Terrell, Greenville.

Reuben R. Arnold, Jr., Atlanta.

Secretary—Orville A. Park, Macon.

Treasurer—Z. D. Harrison, Atlanta.

Mr. Terrell: Mr. President, I move that Mr. Dessau be authorized to cast the entire vote of the Convention for these nominations.

Motion unanimously carried.

Mr. Dessau: In accordance with the resolution, Mr. Chairman, I cast the vote of the Association for the gentlemen named for their respective offices.

The President: The next business in order is the report of the Memorial Committee.

The Secretary: Mr. Chairman, I do not see present this morning the Chairman of the Memorial Committee. The Committee, as I understand it, has prepared memorial notices of our deceased brethren, and in accordance with the usual custom, beg leave to print their report without having it formally read.

The President: If there is no objection it will take that direction. (See Appendix O.)

The President: The next business is a paper by Professor Sylvanus Morris on the subject of "Pleading."

Mr. Morris presented the paper. (See Appendix P.)

The President: The next in order is the paper by Mr. Walter G. Charlton, of Savannah.

Mr. Charlton: Mr. President and Gentlemen: This paper promises to be brief and will make no demand upon your higher faculties. It is a few mild observations upon the Colonial Court of Georgia, concerning which you heard something very delightful said last night. (See Appendix Q.)

The President: We will now have a paper entitled "Public Opinion of Law and Lawyers," by Hon. A. P. Persons.

Mr. Persons read his paper. (See Appendix R.)

The President: Our next number is a Symposium on Justice Courts, their organization, jurisdiction, procedure. This discussion will be opened with a paper by Mr. A. H. Russell, of Bainbridge, followed by Mr. Irwin Alexander, of Augusta; Mr. E. T. Moon, of LaGrange; Mr. A. W. Evans, of Sandersville; Mr. W. W. Bacon, Jr., of Albany; Mr. A. H. Thompson, of LaGrange. (See Appendix S.)

The President: The next business in order is the report of the Committee on Jurisprudence and Law Reform through its Chairman, Mr. Meldrim.

Mr. Meldrim: The report is a very brief one. The subject of the report has already been practically disposed of by the action of the Association on yesterday, and the only other suggestion in the report is one which has been made largely by reason of the previous suggestion of Mr. Justice Lumpkin in a case reported in the 112th Ga. The report is as follows: (See Appendix T.)

The President: General discussion of this report is now in order.

Col. Lawton: It seems to me that we should take action on the report, and I move that that part of it which calls for legislation be referred to the Committee on Jurisprudence and Law Reform, that they may draft a bill and present it to the Committee on Legislation.

Mr. Meldrim: I want to make a suggestion on this line. As Chairman of the Committee on Jurisprudence, I have noticed that matters are referred from time to time at one meeting of the Association to the different Committees, yet they often pass out of mind. The Chairman of that Committee now is probably not on the Committee for the following year. Now I believe that the practical good in this Association is to be found in suggestions to the Legislature. Bills should be presented to the Judiciary Committee of the Senate. I think every gentleman present will agree with me that we have never had a more charming meeting of this Association, yet much of the work is absolutely thrown away because the results we reach are not

adapted to be put in form of legislation. I do not know the best way to get at it. I think it might be well to appoint the new Committee on Jurisprudence and Law Reform at this time in order to have them prepare a draft of a bill for the next meeting of the Legislature in October, so that they will really present the matter to the Legislature.

The President: The first question is on the report.

Motion to adopt seconded and carried.

Mr. Dessau: Is there a Committee on Legislation?

Mr. Meldrim: I don't think so.

Mr. Dessau: Then I make a motion to create a committee in accordance with the by-laws. It might be adopted, and I will put it into form in due time.

Motion seconded and carried.

Mr. Marion Harris: I beg to call attention along this line to the fact that our law of Master and Servant is badly in need of legislation—particularly the rules of diligence and negligence as laid down in our Code. I refer particularly to master and servant other than railroad companies and their employees, and I beg to suggest the matter now to the Association, as it may perhaps the better get to the attention of the committee.

Mr. Roland Ellis: In what particular is legislation needed?

Mr. Harris: In this particular—under the present law it is next to impossible for an employee to recover from his master, and some of the lawyers of the Association, other than those who represent the masters, ought to be given a little show, it seems to me, under the laws of Georgia. Mr. Thompson has recently written a book on negligence, which contains a great many criticisms upon the rules of diligence laid down in the Georgia Code, and I think it would be well to have a standing committee to consider these matters.

The President: The next business in order is the report of the Committee on Interstate Law, which will be submitted by Mr. Wimbish, a member of the committee.

The Secretary: Mr. Chairman, Mr. Wimbish is unwell to-day, and hence not present. The report has been prepared by the

chairman, Captain Clifford Anderson, of Atlanta. As the time is so short before the hour of adjournment, we could not discuss with any degree of satisfaction the matters embodied in this report. I, therefore, move that the report and the recommendations contained in it be made the special order for the second day of our next meeting during the morning session.

Mr. Dessau: I second the motion.

Motion adopted.

(For report see Appendix U.)

The President: The next business is the appointment of delegates to the American Bar Association. The chair will appoint Mr. Jack J. Spalding,* Mr. Roland Ellis and Mr. J. H. Merrill.

Is there any miscellaneous business?

Mr. Dessau: Mr. President, in a conversation which I had upon yesterday with some of the members of the Committee on Legal Education and Admission to the Bar, and with some other gentlemen also, it was suggested that it might be a very wise thing to have this same committee continued for the ensuing year. Of course, that could not be done without a change of the Constitution, which I would not, under any circumstances, ask, but I desire to move that, if it is possible, that committee be continued in force for the ensuing year and the incoming president be requested to continue that committee as it now stands.

Motion seconded and adopted.

Mr. Harwell: Mr. President, I have a resolution to offer touching the publication of the proceedings of this Association. The proceedings were not published until several months after the adjournment of the Association last year. I don't know what the reason was. I don't know whether the by-laws prescribe in what time they shall be published, but I should think that something like sixty days or ninety days would be sufficient, and I move that we introduce a resolution that it be the

*Mr. Spalding finding it impossible to attend the meeting of the American Bar Association, resigned, and President Battle appointed Mr. Justice Samuel Lumpkin, of the Supreme Court, to fill the vacancy.—Secretary.

duty of the Secretary to publish and distribute the proceedings of this Association within, say ninety days after the adjournment of the Association.

The Secretary: While there seems to be no second to the motion, the gentleman is entitled to an explanation which I am very happy to give now, not only to him, but to other members of the Association. There is no by-law requiring the proceedings to be published within a given time. While that is true, the Secretary always endeavors to get the minutes out as promptly as possible. Last year the Secretary, on account of serious illness in his family, was kept from any official business for two or three months. The report would have been gotten out more promptly, however, but for an unusual accumulation of work at our usually very prompt printing house. For that reason the printing was delayed for some three or four months after the manuscript was all in. The Report came out just as promptly last year as it was possible for the Secretary to get it.

The time which the gentleman suggests is rather short. Any one who has had experience with printers knows that it takes some time to get out a report like this. It takes time to write out the stenographic notes, time to correct these, and to collect and edit the various papers and other matters which go to make up the report.* The proof of the entire volume has to be corrected twice, while the composition, printing, binding and distribution of a three-hundred-page book is itself a considerable undertaking. This work of course has to be done at odd times by the Secretary, as his salary is not sufficient to authorize the abandonment of his practice during the preparation of the report.

Mr. Peabody: I move as a substitute that the Secretary be requested to publish the proceedings as soon as practicable.

Mr. Harwell: I don't insist upon the motion. The explanation is satisfactory so far as I am concerned. I think, though,

* Of the matter in the present volume a portion of the manuscript did not reach the Secretary's office till October 4th.

that the proceedings of this Association could be published in ninety days.

The President: Does the gentleman withdraw his motion?

Mr. Harwell: Yes, sir.

Judge Bleckley: I rise to offer a resolution, which I hope the Secretary will have written out if it meets the approbation of the house.

I move that we render thanks to Mrs. Terrell in substance as follows:

"Resolved, That the Georgia Bar Association, recognizing the great service of Mrs. Terrell rendered last evening in the reading of her admirable lecture, tender her their thanks—their profound thanks; and at the same time we recognize the inadequacy of these thanks as a return for the service rendered, and, therefore, we add to our thanks the offer of any service which this Association or its members can render to Mrs. Terrell upon her request." (Applause.)

Mr. Burton Smith: I second the motion.

The President: The question is on the motion of Judge Bleckley.

Motion put and unanimously carried.

Mr. Meldrim: Just to trespass a moment, sir. It becomes necessary, to carry out the suggestion I offered a while ago, to amend the by-laws. I offer this by-law so that it can be acted upon:

"18. There shall be a standing committee consisting of three members to be appointed by the President during the session of the Association. This committee shall be known as the Committee on Legislation, and its duties shall be to prepare for legislative action such matters requiring legislation as may have received the approval of the Association. It shall further be the duty of the committee to make due presentation of such proposed legislation to the appropriate legislative committees or bodies."

Mr. Dessau: I move the adoption of the by-law.

Motion seconded and carried.

Col. Lawton: Mr. Chairman, the Georgia Medical Society presented a paper to this Association through one of its members, at the session of the Association in 1899, and that memorial has never been answered by this Association. It was referred to the Committee on Jurisprudence and Law Reform of last year,

of which I ~~was~~ the chairman, and a report was submitted by that committee. It has never been acted on, and we stand in the position of having treated the Georgia Medical Society with discourtesy. The subject-matter of the report does not meet with unanimous approval. It is, therefore, too late at this session of the Association to bring the matter up for discussion, but I recommend that the report of our committee, made last year, shall be put on the program for next year.

Motion seconded and adopted.

The President: The chair would like to inquire if it is intended that the present President shall appoint the committee provided for by Mr. Meldrim's by-law.

Mr. Meldrim: That is the purpose of it. I think it would be better than to refer it to the next President.

The Association here took a recess of five minutes.

The President: Before announcing the committee provided for by the resolution of Mr. Meldrim, the chair desires to state that Mr. Meldrim declines to serve on the committee, otherwise, we would be very glad indeed to appoint him.

The chair appoints on that committee: Mr. Dessau, Mr. Lamar and Mr. A. C. King.

Judge Bleckley: What I have to say does not strictly come under the head of business, but it is exceedingly miscellaneous, and under that head I present it:

For the third time I am able to be with this Association as its guest, and in view of the many favors shown me by the Association, I beg to return my thanks, and to add this: I believe with Mr. Carnegie, that no man should die rich; that he should, during his lifetime, confer all the benefactions that he intends to confer upon humanity, and, acting under that view, I have concluded to endow this Association. I have noticed that you never declare any dividends through your Treasurer, although you pay your debts, and as the Treasurer says, "owe no man anything." Hence, my determination to endow you according to my ability. I have no ready money on hand, but I intend to give you my note for one hundred thousand dollars. (Loud

applause.) Gentlemen, I hope you will accept it. (Continued applause.)

The President: The chair thinks it can speak for the Association when it says that it believes we are fully safe when we possess the note of the venerable ex-chief justice.

If there is nothing else before the Association, the President desires to extend his warm thanks to the members of the Association for the kindness and courtesy they have shown him during his term of office. If there is nothing else to come before us the chair will declare the Association adjourned *sine die*.

APPENDIX A.

HISTORIC LANDMARKS OF THE LAW.

THE PRESIDENT'S ADDRESS, BY

H. WARNER HILL,

BEFORE THE EIGHTEENTH ANNUAL SESSION OF THE GEORGIA BAR ASSOCIATION, AT WARM SPRINGS, GA., JULY 8, 1901.

Gentlemen of the Georgia Bar Association:

With the student of legal history the infant state of our laws is ever a subject of deep interest and study. A brief consideration of the venerable monuments of our law will, it is believed, find willing reception with the practicing lawyer, as well as the student of their rise and progress. It is useful to know the history and reason of the law, the old maxim being that, "not to know the *reason* is not to know the law." An eminent historian has said that "no man can be a good lawyer who is not well acquainted with the history of law. The reason is obvious enough upon reflection, for to be a lawyer, and still more to be a jurist, demands a thorough acquaintance with the *principles* of law, and these can only be acquired by tracing them so to speak, to their real sources and origin—an inquiry which belongs to legal history; forms may perish but *principles* remain, and they only reappear in new forms more suited to the manners and exigencies of the age." The law student, therefore, delights in the study of not only what the law is, but what it was; to trace its whole course and progress, and see what it was in the earliest period of our civilization, note its development and observe the changes made in it. A history of our laws is manifestly without the scope of this paper, its purpose being to consider historically a few only

of the landmarks—the great north stars by which society in all ages since our earliest civilization has been guided by these “pillars of cloud by day and of fire by night.”

In order to trace laws and institutions to their real origin it is necessary to go back to that period when they first existed in civilized countries and discover the primitive source whence they were originally derived. In the introduction to his Commentaries “On the Study of Law,” Blackstone says, “I think it an undeniable position, that a competent knowledge of the laws of that society in which we live, is the proper accomplishment of every gentleman and scholar; an highly useful, and I had almost said essential part of liberal and polite education. And in this I am warranted by the example of ancient Rome, where, as Cicero informs us, the very boys were obliged to learn the twelve tables by heart.” But from the following the same great author seems a little jealous of the study of the Roman law by Englishmen to the exclusion of English law, for he says: “We must not carry our veneration so far as to sacrifice our Alfred and Edward to the manes of Theodosius and Justinian; we must not prefer the edict of the prætor or the rescript of the Roman Emperor to our immemorial customs, or the sanctions of an English Parliament.” He seems oblivious of the fact that much of the English law and customs was derived from the Romans. While Britain was yet in barbarism, as we learn from Cæsar’s Commentaries, Rome had a perfect system of laws. It is both pleasant and instructive to trace the origin and history of our laws to their source. Much time and money have been spent and many lives sacrificed in the effort to explore Africa and the Nile to its source, yet the explorations continue year after year, and the interest never abates from one generation to another. Whether Stanley or Livingston in the heart of “darkest Africa,” or Nansen and the Duke of Abruzzi in the arctic regions in sight of the coveted north pole, the student of history never tires reading of their exploits or great achievements. Nor does the student of legal history weary of the exploits of our pioneer legal brethren in the misty past, as they builded for themselves and pos-

terity the great landmarks of the law, which should guide and govern society for all future generations. Let us, therefore, for a little while take a short retrospect and see something of these original landmarks, who erected them, and what they are. And first, let us acknowledge that "the background of all law, science and knowledge is the entity and will of the Supreme Being," He who gave through his chosen oracles the great moral law which is the foundation of nearly all human laws, for as Froude says, "our human laws are but copies, more or less imperfect, of the eternal laws, as far as we can read them." In tracing the origin of our laws it is interesting to note how many are taken from the Bible—from the Mosaic law. And perhaps the greatest and most enduring landmark of the ages is the decalogue, which was given to man amidst the smoke and thunders of Sinai, and the tread of Omnipotence Himself. It is as enduring as time, and as sacred as the Bible. Upon it as a foundation have been erected nearly all our penal and many of our civil laws, and though given to man centuries ago, in every land and clime where civilization exists, the statute books of to-day declare that there shall be protection to life, liberty and property; yea more, to reputation, and all this is based upon the law given to man upon the tables of stone. The entire object of law is embraced in the protection of life, liberty, property and reputation. By this law it is declared "thou shalt not kill." Human life shall not be taken blameless, except by commandment of the law, in self-defense, or in defense of property or habitation, or by accident, and "whosoever sheddeth man's blood," except as noted above, "by man shall his blood be shed." And again the Mosaic law is that "whoso killeth any person, the murderer shall be put to death by the mouth of witnesses; but one witness shall not testify against any person to cause him to die." Num. 35:30.

"Thou shalt not steal." Every man is protected, under the law, in the enjoyment of his property rights, and any infringement of those rights is punished. Not only is theft prohibited by human and divine law, but the decalogue goes further and declares that thou shall not even "covet that which is thy neigh-

bors," and wise is this prohibition, for if no covetousness existed there would be no theft. It is the coveting of other people's property that ends in larceny and other violations of the law. A man is as secure in his reputation, under the law, as in his life, liberty or property; for it was also thundered from the Mount "thou shalt not bear false witness," and whosoever speaks falsely of his neighbor to his hurt or injury is answerable in damages before the courts of any civilized nation on earth. One of the commonest evils and sins of the day is not so much slander and libel as it is false swearing—bearing false witness. What lawyer who values truth, even above the success of his case on trial, has not been made sick at heart by the perjury committed at almost every court?

"Remember the Sabbath day to keep it holy." One day in seven was wisely set apart as a day of rest and observance, and throughout the civilized world all secular business is suspended on the Sabbath under heavy penalty, and every man allowed to worship God according to the dictates of his own conscience, with "none to molest or make him afraid."

General Robert Toombs, one of our greatest statesmen and lawyers, said no man who aspired to be a lawyer or statesman could have a correct view of law or statesmanship who was not a close student of the Bible. And Samuel Taylor Coleridge declares that "for more than a thousand years the Bible, collectively taken, has gone hand in hand with civilization, science, law, in short, with moral and intellectual cultivation, always supporting, often leading the way." And this is especially true of the law, for there is scarcely a branch which has not for its foundation, as already observed, the Bible or some portion thereof. And I beg your indulgence while I enumerate a few of the Biblical landmarks, with but slight comment, which the bar will readily recognize as the foundation of some familiar rule of law, unless (which is improbable) the following story of Benjamin Franklin is applicable: "When he was ridiculed in Paris for his defense of the Bible, Franklin determined to find out how many of the scoffers had read it. He informed one of the learned

societies that he had come across a story of pastoral life in ancient times that seemed to him very beautiful, but of which he would like the opinion of the society. On the evening appointed, Franklin read to the assembly of scholars the Book of Ruth. They were in ecstasies over it, and one after another begged that the manuscript might be printed. 'It is printed,' replied Franklin, 'and is a part of the Bible.'” Thus our law of inheritance is very similar to, and taken, no doubt, from the following in the Book of Numbers. “And thou (Moses) shall speak unto the children of Israel, saying, If a man die and have no son, then ye shall cause his inheritance to pass unto his daughter. And if he have no daughter, then we shall give his inheritance unto his brethren. And if he have no brethren, then ye shall give his inheritance unto his father's brethren. And if his father have no brethren, then ye shall give his inheritance unto his kinsman that is next to him of his family, and he shall inherit it.” Num. 27:8, 9, 10, 11.

And so we have a precedent for the oath of witnesses in the following from Genesis: “And Abraham said unto his eldest servant of his house, that ruled over all that he had, Put, I pray thee, thy hand under my thigh; And I will make thee swear by the Lord, the God of heaven, and the God of the earth, that thou shalt not take a wife unto my son of the daughters of the Canaanites among whom I dwell. And the servant put his hand under the thigh of Abraham his master, and swore to him concerning that matter.” Gen, 24:2, 3.

Our law of torts can find a foundation in the following: “If the ox shall push a manservant or maidservant, he shall give unto their master thirty shekels of silver and the ox shall be stoned. And if a man shall open a pit, or if a man shall dig a pit, and not cover it, and an ox or ass fall therein, the owner of the pit shall make it good, and give money unto the owner of them; and the dead beast shall be his. If a man shall cause a field or vineyard to be eaten, and shall put in his beast, and shall feed in another man's field; of the best of his own field, and of the best of his own vineyard, shall he make restitution.” Ex. 21:32, 33, 34; Ex. 22:5.

We have divine authority for the law against usury, for it is declared in holy writ: "If thou lend money to any of my people that is poor by thee, thou shalt not be to him an usurer, neither shalt thou lay upon him usury." Ex. 22:25. Lev. 25:37. It seems that any interest charged on money borrowed for necessity in Bible times was usury.*

Our statute of limitations, homestead and bankrupt laws somewhat correspond to the year of Jubilee, wherein it is said: "And ye shall hallow the fiftieth year, and proclaim liberty throughout all the land unto all the inhabitants thereof; it shall be a jubilee unto you, and ye shall return every man unto his possession, and ye shall return every man unto his family." Lev. 25:10.

The first circuit courts of which we have any record were presided over by Judge Samuel, who it seems held office for life and was an able and upright judge, and if we are to believe his statement, he never defrauded or oppressed the poor, nor took bribes from the rich. Hear him: "And Samuel judged Israel all the days of his life. And he went from year to year in circuit to Bethel, and Gikal, and Mizpeh, and judged Israel in all those places. And his return was to Ramah; for there was his house; and there he judged Israel." 1 Sam. 7:15, 16, 17.

Samuel seems to have had the appointing of his successors in office, for we are told that when he was old "he made his sons judges over Israel." And but one fault, as I see it, Samuel had. He set the example for nepotism, and as is usually the case, his appointees were miserable failures, for we are told that "his sons walked not in his ways, but turned aside after lucre, and took bribes, and perverted judgment." But though they were degenerate sons, the name of Samuel will always live as the author of circuit courts, and as an able and impartial judge. What an enviable record and example he left posterity! In resigning his office of judge on account of old age, he made this memorable and classic farewell speech: "I am old and gray-headed; and, behold, my sons are with you; and I have walked before you from

*Watson's Bib. Dict. Benson's Com.

my childhood unto this day. Behold here I am; witness against me before the lord, and before his annointed; whose ox have I taken? or whom have I defrauded? Whom have I oppressed? or of whose hand have I received any bribe to blind mine eyes therewith? and I will restore it unto you. And they said, thou hast not defrauded us nor oppressed us, neither hast thou taken aught of any man's hand." 1 Sam. 12:2-4.

But the greatest lawyer and lawgiver of the ages was Moses. We have already seen that the Ten Commandments were handed down by him amidst the lightnings and thunders of the historic old mountain. His instructions to his judges deserves a place alongside the decalogue: "Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him. Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man, for the judgment is God's; and the cause that is too hard for you, bring it unto me, and I will hear it." From this it appears that Moses constituted himself a kind of appellate court.

The code of this great lawgiver has been the model and pattern for the ages. In the Codes of Justinian, of Theodosius and of Alfred, are found unmistakable evidences of the Mosaic law. The Code of Justinian comprised in twelve books was mainly a revision of the ordinances of his predecessors. The Code, the Pandects and the Institutes, were declared to be the legitimate system of civil jurisprudence, and were alone admitted into the tribunals and taught in the academies of Rome, and it is worthy of note that this great compiler of the Roman law, ascribed the accomplishment of his great work to the support and inspiration of the Diety.

But while many lawyers and monarchs have imitated Moses and copied from his laws; and while he was never permitted to enter the promised land; and while no man knoweth his grave to this day, his name and fame as the greatest lawgiver of the world will abide, as it has abided, so long as history is written and the Bible is read. Whether we consider him as a mere human law-

giver or having compiled the customs and usages of the ages before him, as some contend, or whether he was the chosen oracle or medium of the Supreme Being to disseminate the true law, it must be admitted by the student of law and its history, that his code must ever be recognized as the wisest and best of the ages for the government of the human family. His code as contained in the Book of Deuteronomy was a complete one at the time it was delivered to the children of Israel. "Historical criticism," says a learned writer, "may question the accuracy of the tradition as to the origin of the Mosaic law. It may see in this code, as it does elsewhere, no more than a product of slow development and gradual establishment of customs extending back in the history of the nation to a time far beyond the reach of tradition. But does this necessarily destroy the historical character of Moses? Unquestionably such a supposition would destroy his character as a divinely commissioned lawgiver, but it might still leave him his character as a wise legislator." But if we accept at all, let us accept it as we find it, without doubt or hesitation.

One other landmark from the Bible, although there are many others, and I am done with this branch of my subject. I say the Bible, but more properly the Apochrypha, which, strictly speaking, is no part of the Bible.

One of the earliest cases reported of separation of witnesses is that in the Book of Susannah. Susannah was the wife of "a great rich man," a woman of much beauty and purity of character, but was condemned to death on the testimony of two blundering and wicked elders, for a violation of the Mosaic law. She was tried, convicted and sentenced to death upon the testimony of these two elders, who swore positively as to her guilt, although she stoutly proclaimed her innocence, as in fact she was. As the officers of the law were taking her to the place of execution, a young man by the name of Daniel, who seems to have been something of a lawyer, suddenly rose up and asked the people. "Are ye such fools, ye sons of Israel, that without examination or knowledge of the truth ye have condemned a daughter of Israel? Return again to the place of judgment, for these

have borne false witness against her." Whereupon those in authority granted the young lawyer another hearing, or "new trial," for his fair client. And the first thing he did was to put the two elders who had borne false witness "under the rule," as the lawyers now say, but Daniel said: "Put them asunder one far from another, and I will examine them." And with this the bright and resourceful young advocate commenced to belabor and brow-beat unmercifully the witness, and said to him, "O, thou that art waxen old in wickedness, now are thy sins come home to thee which thou hast committed aforetime, in pronouncing unjust judgment, and condemning the innocent, and letting the guilty go free; albeit the Lord saith, the innocent and righteous shalt thou not slay." Then he put the question direct to the witness: "Now then, if thou sawest her, under what tree sawest thou them?" And the witness answered, "Under a mastick tree." And Daniel again abused him and said, "Right well hast thou lied against thine own head; for even now the angel of God hath received the sentence of God and shall cut thee in two" And with that he made this perjurer stand aside, and asked the sheriff to call in the other witness, and when he was come, Daniel employed about the same tactics as with the other, and heaped a torrent of abuse upon his unworthy head, and said to him, "O thou seed of Canaan, and not of Judah, beauty hath deceived thee, and lust hath perverted thine heart . . . but the daughter of Judah would not abide your wickedness. Now, sir, tell me under what tree didst *thou* take them?" And this second witness conscious of guilt and frightened almost to death, answered, "Under a holm tree." "Right well hast *thou* lied against thine own head," rejoined the now triumphant young lawyer, "for the angel of God waiteth with the sword to cut thee in two, that he may destroy you." And with this Daniel's reputation as a lawyer was made, for by the separation of the witnesses they had told conflicting stories, the young lawyer had won his case, cleared his fair client amid applause of the waiting people, established the precedent for the separation of witnesses that will last for all time; and the record closes with the statement that "they arose

against the two elders and did unto them in such sort as they maliciously intended to do to their neighbor." Paraphrasing the motto of the hero of a recent novel ("**David Harum**"), they "did unto the elders as the elders would have done unto **Susannah**, but did it first."

If ~~time~~ and your patience permitted, it would be interesting to trace the rise and progress of the common law of England, which is said to be the perfection of human reason, on down through the colonies to the present time; to review the early struggles of those who, after five centuries of Roman occupation of Britain, began to make English history from the landing of the two brother Hengiest and Horsa, the roving adventurers and pirates, in England about the fourth or fifth century. How the Angles were soon followed by the Saxons under the command of Cerdic and his son Kenric, in the year 495; of how the Romans, the Picts, the Angles and various clans of Saxons and Danes with their different customs and laws created great uncertainty and confusion in the customs and laws of the kingdom, and how all these finally became blended together into one composite nation, and by a communication of their different customs and laws it gradually became the common law of the realm for securing the rights of property and the punishment of crime; of how the Heptarchy or seven Saxon kingdoms were established, or according to Dr. Lingard, the octarchy, consisting of eight, after the bloody contest of a century and a half; of how these states were finally united by Egbert, king of Wessex, in 827, under the name of "England," and trace the slow evolution of the savage customs of the barbarians into the growth and perfection of the common law. But all this is beyond the limit of this hour, and hence we skip to the beginning of the thirteenth century and examine for a moment that greatest of all landmarks to Englishmen, the Charter of Liberties.

There were charters before the one unwillingly granted by John. William had granted a charter as early as the year 1071, but there was no way of enforcing the rights he promised. So had Henry I., who held his throne by a dubious title, in order

to conciliate his people, granted a charter, and it was formally signed by him. In this charter he had abrogated most all the abuses that existed; and it was therein declared that no reliefs should be taken but such as were just and lawful. He disclaimed any right to exact money from his barons for licenses to marry their daughters, or other females, a practice which had grown to be very obnoxious; and he agreed to give all female wards in marriage by the advice of his barons. The dower of widows was secured, and he agreed not to give them in marriage, as previously, without their consent. The widow or some other relative was to have the custody of the lands, and the persons of their children. All barons were enjoined to act in like manner towards their vassals. He not only granted these things, but ordinances to punish crimes, and the laws of Edward the Confessor, were also confirmed. This charter of Henry I. was ratified by Stephen, who also in turn, granted another charter, which had for its purpose securing the liberties of churchmen, for to this order, it has been said, he was mainly indebted for the possession of the crown. Henry the II., also confirmed the charter of Henry the I. But the charter of Henry II. did not reach all the causes of complaint in the kingdom. In fact, the language of the charters of both Henry I. and Henry II. were in general terms and did not reach all the evils about which the people complained; nor, indeed, were those provisions of the charter faithfully kept that the charter did contain. But all these charters were mere empty promises without means of enforcement. These chartered rights might be violated with impunity and there was no remedy. The rights of the people were trampled under foot by each succeeding monarch. The condition of the people, due largely to the unstable and uncertain government, depended greatly upon the character of their kings. And thus the situation was, when the tyrant John came upon the scene in 1199 and attempted to trifle with the rights and liberties of the people. But he lacked the firmness and courage to command their respect and obedience, and by his tyranny, his cruelty and oppression he excited the resentment of his subjects and encountered

their relentless opposition and hatred. His repeated and frequent insults so exasperated his barons that they rose in their might, armed for battle, and demanded of him an agreement, a compact, a charter, a *contract*, by which they might secure in the future their persons and property from the further encroachments of his power. Seeing that they were determined to oppose him with the armies they had hastily gathered, and knowing that resistance was futile, he granted their demands, after they had met in an open field that will forever remain memorable to students of history, and lovers of human liberty and rights. In old England between and near the towns of Staines and Windsor, in the plains of Runnymede, a convention was held between the king and his people, with all the preparations of war on each side. John was encamped on one side of Runnymede; the barons and the people with their army on the other. And it is not to be supposed that securing so great a charter of liberties was the work of an hour or a day. There were days of debate and deliberation; and the grievances of the barons were drawn up, it is said, with the charter of Henry I. somewhat as a foundation, into the form of a charter, and with this as a basis, and new additions, it was finally agreed to by both king and barons, after some minor qualifications by the king, and he finally affixed his seal. Thus the Charter of Liberties, or "Magna Charta," was given to the world as a priceless heritage for all succeeding generations. This charter of human rights is often alluded to as the Great Charter of King John, as though it were granted voluntarily by that imperious prince; on the contrary, he consented to it at Runnymede only because the armies headed by the barons compelled it by superior force; and later he resisted its enforcement, and successfully for a time, with his armies, and but for the assistance of Philip of France and his son Louis, who came over at the head of his army, on the inducement by the barons of allegiance to *him* as sovereign, would have succeeded in wresting this great charter of human liberties from the determined barons of England. This war was in progress on account of these Great Charter Rights at the time of the

death of John. It has been said by an eminent historian that "the character of this prince is nothing but a complication of vices, equally mean and odious; ruinous to himself and destructive to his people. Cowardice, inactivity, folly, levity, licentiousness, ingratitude, treachery, tyranny and cruelty; all these qualities appear too evidently in the several incidents of his life to give us room to expect that the disagreeable picture has been overcharged by the prejudices of the ancient historian. It is hard to say whether his conduct to his father, his brother, his nephew or his subjects was most culpable; or whether his crimes in these respects were not even exceeded by the baseness which appeared in his transactions with the king of France, the people and the barons." It is worthy of note in passing, that John's European dominions, which devolved upon him by the death of his brother Richard, were more extensive than have ever been ruled by an English monarch since his time. But by his arbitrary assumption of power and bad conduct, he lost some of the most valuable territory which had come to him as the ancient patrimony of his family. John finally died on October 17, 1216, when in imminent danger of being totally expelled from his own country by Louis and the barons, and spending the remainder of his life in exile, or in prison.

So it will be seen that it is to the ancient barons of England, and not to John, that we owe our debt of gratitude for the great blessings we enjoy on account of Magna Charta! And thus, "if we to-day should have a sneaking kindness for a lord," as the great statesman and lamented commoner, Mr. Gladstone, expressed it, it should be on account of our gratitude to the ancestors of the present House of Lords of England, who met and extorted from the despotic John, in the plains of Runnymede, Magna Charta, and all the blessings of liberty which have flowed from it for over seven hundred years, and which we may well hope will flow on as long as human liberty and rights are prized. It is generally thought that Magna Charta was the first charter of rights that had been granted to the English people, and it does seem to be the first that contained the elements of a con-

tract, and that was self-executory, for in it the king and barons provided that for a violation of its provisions, the barons might choose twenty-five of their own number, "together with the community of the whole kingdom," who "shall distress us in all the ways they shall be able, by seizing our castles, lands, possessions, and in any other manner they can, till the grievance is redressed according to their pleasure; saving harmless our own person and the persons of our Queen and children, and when they are redressed they shall behave to us as before." If complaint was made of a violation of any of the charter rights, either by the king or any of his officers, any four of these barons might ask redress of the grievances of the king or his justiciary, which being denied, the whole body of twenty-five could be convened with the "general council," and these had the power and authority to compel an observance of the charter. If the king still resisted, they might levy war against him as above set forth. Thus was provided in the charter itself a remedy, somewhat summary and revolutionary for all the wrongs that might be committed under the charter. And all men throughout the kingdom were compelled to swear obedience to the twenty-five barons, or else have their property confiscated. By the terms of the charter, therefore, all subjects of the kingdom had guaranteed by it positive rights capable of being enforced.

Guizot, the great French historian, in his "History of Representative Government," has said: "Liberties are nothing until they become rights, positive rights, formally recognized and consecrated. Rights, even when recognized, are nothing as long as they are not entrenched within guarantees. And lastly, guarantees are nothing so long as they are not maintained by forces independent of them, in the limits of their rights. Convert liberties into rights by guarantees, entrust the keeping of those guarantees to forces capable of maintaining them. Such are the successive steps in the progress towards free government." John submitted passively to the conditions imposed by Magna Charta for a time, although they were humiliating and deprived him of many of his former powers. But he soon grew restive and

rebellious under what he considered injuries and indignities placed upon him by his former rebellious subjects. These reflections made a deep and lasting impression upon him; and he determined at any cost to throw off this seeming slavery under which he was made to rest. It is said that "he grew sullen, silent and reserved; he shunned the society of his courtiers and nobles; he retired into the Isle of Wight, as if desirous of hiding his shame and confusion, but in his retreat he meditated the most fatal vengeance against all his enemies." How different the conditions and circumstances surrounding this cruel, enraged and weak tyrant while on the Isle of Wight to the last visit of the late good and beloved Queen of England to this historic old island! John sent his agents abroad to enlist foreign soldiers in his effort to abrogate Magna Charta. He sent a messenger to Rome in order to lay the Great Charter before the Pope, which he had been compelled by force of the armies of the barons to sign; the Pope of Rome issued his "bull" annulling and abrogating the whole charter, as being unjust in itself, extorted by force, and "derogatory to the dignity of the apostolic See. He prohibited the barons from exacting the observance of it; he even prohibited the king himself from paying any regard to it; he absolved him and all his subjects from all oaths which they had been constrained to take to that purpose; and he pronounced a general sentence of excommunication against every one who should persevere in maintaining such treasonable and iniquitous pretensions." Thus encouraged by the Pope's "bull" and his rapidly increasing army, John showed his real feelings towards the people and their charter which he had unwillingly signed, and attempted to repeal all the liberties which he had granted his subjects and which he had solemnly promised to observe. But "Magna Charta is such a fellow," says Sir Edward Coke, "that he knows no sovereign." And notwithstanding John's attitude in church and state, and his attempt to forcibly abrogate the Great Charter, he found that his people, including nobles and clergy, stood firm in defense of their liberties and to the determination to forcibly resist his further tyranny. All he had to

support him in this unholy war was the hired army of foreigners he had brought over for the purpose of resisting the people, and for a while, we are told, that these ravenous and barbarous mercenaries, incited by a cruel and enraged prince, were turned loose against the estates and tenants of the barons, and spread destruction over the kingdom. The king himself marched through the whole of England, and laid waste on every side. But the appearance of the young French prince (Louis) at the head of the barons, had the effect of making John's forces, who were mostly from the provinces of France, desert their cause and leader. Soon after the entrance of Louis into England, John, from exposure incident to his reckless and mad career, contracted a disease from which he died. Thus ended the reign of one who was the most determined enemy that Magna Charta ever had, though he had granted it. It has been said by a gifted writer that "John was a special dispensation of Providence, for the weakest and wickedest of kings became the mightiest instrument for the uplifting of English constitutional liberty." This scrap of English history is recalled that we may be reminded of the many ordeals through which our ancestors passed in defending their rights and liberties under one of, if not the greatest, charters ever vouchsafed to man. Barons and lords though they were, posterity should, and will, be grateful to these determined knights for the liberties which we now enjoy, for while the fruits of the efforts of the ancient barons to secure the liberties and rights contained in Magna Charta during the reign of John were not fully realized then, it remained for a later period to give the full fruition of all that was hoped and contended for during this reign. So frequent were the encroachments of the crown upon the chartered liberties of the subject that, we are told, "Magna Charta hath been confirmed above thirty times, and commanded to be put in execution from the first Edward to Henry the fifth." Before Magna Charta, our English ancestors, while they possessed the letter of the law, saw all their old customs and usages explained away. So corrupt were the times and precarious the state of the laws at this period, it is said that the

people were constrained to purchase the favor of the crown in order to obtain justice in the king's courts.

It is related that bribes were paid for the express purpose of having justice and right. Valuable and costly presents were made to the king's justices by suitors, in order to obtain their judgment in pending causes. These venal and corrupt judges would have been less criminal had they observed the injunction of Don Quixote to his new governor, Sancho Panza, when he instructed him that "If perchance the rod of justice be warped a little, let it not be by the weight of a gift, but that of mercy." "Let the tears of the poor find more compassion but not more justice, from you, than the informations of the rich." It is even said that at this time part of the debt in controversy was often given to the crown for a favorable decision. Thus, justice was liable to the control and interference of royal authority. The law itself was arbitrary and cruel. The entire submission of a subject or tenant to his lord fixed the notion of entire subjection and obedience to the king, who far exceeded the lords in the prerogatives which they themselves claimed and enjoyed by reason of this feudal submission of the vassals. The forest laws gave rise to countless cases of oppression, and created great discontent throughout the realm. The kings confiscated large tract of land belonging to their subjects and converted them into forests; they are said to have depopulated whole districts of farming country in order to gratify their desire for hunting, and to crown it all, punished with outrageous severity and cruelty the minutest invasion of this new law. Thus the violation of the regulations respecting the forest laws were punished with barbarous mutilations, and for minor offenses the subjects were fined and imprisoned. The feudal system and its consequences also gave rise to great complaint and dissatisfaction, and the people bore the yoke of oppression with great impatience, and finally revolted with indignation at the obligations which began only as a fiction, and as affording a basis for a national militia, but which had grown into a custom of abject slavery. Restive under these burdensome cruelties and tyrannies, it is no wonder that

the people sighed for even that freedom they enjoyed under the old Saxon kings. It was a small consolation to a great lord, that he could exercise all the acts of hardship and cruelty over his tenant, which he himself suffered at the hands of the king. Thus it was that the lords and vassals made common cause, and in the plains of Runnymede (or Running-mede) on *June 19, 1215*, obtained those chartered rights which was truly a Charter of Liberties.

Let us consider, having given a brief summary of the events leading up to its enactment, what Magna Charta is, and was, and what benefits mankind derive from it. Sir Edward Coke declares that "the Great Charter of English Liberties" was only a recognition and declaration of the ancient common law of the realm, and this may be inferred from a declaration in the charter itself, for in the conclusion of the 29th chapter, the language is, "we will not pass upon him, but by lawful judgment of his peers, or by the *law of the land*," which clearly indicates that there was a law of the land, by which the citizen could and should be judged. This charter is the great corner-stone of civil and political liberty which all English-speaking peoples of to-day enjoy. While it seems to have been a compromise measure between the king and his barons, by which the king was restrained in many of his feudal exactions, and the people secured in what they considered their rights, it will be seen upon close inspection that it contains the fundamental principles of human liberty. Although this great charter was so often confirmed it seems to have served very little to better the condition of the people at the time, for though the principles declared in Magna Charta were often asserted and declared, they seem to have been as often disregarded. The last act confirming Magna Charta was passed in A.D., 1416 in the fourth year of Henry V., "and from this time to the reign of Charles the I., A.D., 1627," says a writer, "a period of 211 years, the people seem to have quietly submitted to the yoke of arbitrary power; for during this period the principles of the great charter were set at naught, and personal liberty borne down by unlawful prerogatives. From the time of the

charter of Henry III., A.D., 1225, up to the third year of Charles the I., a period of more than four hundred years, the principles of English liberty, as contained in the 29th chapter of the great charter, seem never to have been properly understood and enforced. Nor have we any reason to believe that the people of England ever were in the practical enjoyment of civil liberty, either before or after the grant of this charter, until the spirit of freedom imperfectly shone forth under the reign of Charles the I., when the oppressions of the time drew forth the 'Petition of Right.'

Though Magna Charta had been so often granted and as often reaffirmed, yet from A.D. 1225, during the reign of Henry III. to the reign of Charles the I., the English people seem to have submitted quietly to arbitrary power and did little to better their condition. During the reign of Charles the I. English liberty may be said to have fully commenced and to be fully enjoyed. In this reign the "Petition of Right" was demanded by parliament, and granted, though reluctantly, by the king. The abolition of military tenures, and the *habeas corpus* act, which was brought about by the arrest and confinement of an obscure citizen during this reign, was the beginning of a new era in the history of English liberty. And the foundation of the so-called English constitution is Magna Charta (the one of Henry III., A.D. 1225); the Petition of Right; the abolition of military tenures; the *Habeas Corpus* Act, and the Bill of Rights and Settlement—all these form the groundwork and foundation of the British Constitution.

A short analysis of Magna Charta may be interesting. The first chapter begins with this singular declaration: "First, we have granted to God, and by this our present charter have confirmed for us and our heirs forever, that the Church of England shall be free, and shall have all her whole rights and liberties inviolable." What is meant by the expression "have granted to God" is not entirely clear, but the idea probably was, that the church on earth was the physical symbol of God in the world, and whatever was granted to the church was given to God. It is

a little remarkable, that although our Pilgrim Fathers came to this country to escape religious persecution in the old world, yet when we adopted a fundamental law, ours was the only great constitution of English-speaking peoples declaring the rights and liberties of millions of mankind, which had or has no reference to the Supreme Being. It is true our Declaration of Independence and Articles of Confederation, both, have such references, the Declaration of Independence, which has been called the second Magna Charta, concluding with "a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes and our sacred honor." And in the Articles of Confederation we find "it has pleased the Great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress to approve of and authorize us to ratify the said Articles of Confederation and perpetual union." Yet, the great Constitution of the United States itself has no reference to the God of nations, though Magna Charta, centuries before, had thus given testimony of allegiance to the Supreme Ruler of the universe. These two great instruments which have perhaps affected the laws and happiness of English-speaking peoples, more than any other, the one the foundation of the English constitution, the other is ours, with all our boasted civilization and religion, and no reference in the greatest of all human fundamental laws to a Supreme Being! Great and elastic as it is, reaching out even now and taking within its protection the distant islands of the sea, it would have been greater with this simple addition. Hardly any State Constitution that does not contain it. Well might we have imitated Magna Charta in this, as in other respects. But while we did not follow it in the particular mentioned, Congress at its first session, held in the city of New York, on the fourth day of March, 1789, proposed to the legislatures of the several States twelve amendments to the Constitution of the United States (ten of which only were adopted). The first amendment was evidently in imitation of Magna Charta quoted above. This amendment declares "Congress shall make no law respecting an establishment of religion, or prohibiting the

free exercise thereof." As in Magna Charta, the Church "shall be free, and have all her whole rights and liberties inviolable," so we cannot be "prohibited from the free exercise" of our religious convictions.

In chapter 4 it is declared that "the keeper of the land of such an heir (wards) being within age, shall not take of the lands of the heir, but reasonable issues, reasonable customs and reasonable services, and that without destruction and waste of his men and his goods." This is very similar to and the foundation, no doubt, of our present law of compensation to guardians.

The right of a widow to have her dower seems to have been recognized that preserved even at and before the time of Magna Charta, for that great instrument declares, "A widow after the death of her husband," (and it is difficult to perceive how she could become a widow until the death of her husband), "incontinent and without any difficulty, shall have her marriage and inheritance, and shall give nothing for her dower, her marriage, or her inheritance which her husband and she held the day of the death of her husband, and she shall tarry in the chief house of her husband by forty days after the death of her husband, within which days, her dower shall be assigned her (if it were not assigned her before), or that the house be a castle; and if she depart from the castle, then a competent house shall be forthwith provided for her, in which she may honestly dwell, until her dower be to her assigned, as it is aforesaid, and she shall have in the meantime her reasonable estovers of the common; and for her dower shall be assigned unto her *one-third part* of all the lands of her husband, which were his during coverture, except she were endowed of less at the church door. No widow shall be distrained to marry herself; nevertheless she shall find surety, that she shall not marry without our license and assent (if she hold of us), nor without the assent of the lord, if she hold of another."

The familiar rule as to intestacy is thus laid down in the 27th chapter: "If any freeman shall die intestate, his chattels shall be distributed by the hands of his nearest relations

and friends, by view of the church, saving to every one his debts which the deceased owed to him."

By the 42d Chapter subjects could be forced outside the realm in time of war "*by some short space,*" according to the following language: "It shall be lawful, for the time to come, for any one to go out of our kingdom and return safely and securely by land or by water, saving his allegiance to us; unless in time of war, by some short space, for the common benefit of the realm, except prisoners and outlaws according to the law of the land, and people in war with us, etc."

It is doubtful whether that meant as far as the Philippines. Probably about as far as Cuba.

The 45th chapter declares that "we will not make any justices, constables, sheriffs, or bailiffs, but of such as *know the law of the realm*, and mean duly to observe it." How many of the named officers would be eligible to election now, if the above rule was enforced, it is needless to say. But as observed elsewhere in this paper, sheriffs and bailiffs were once judges and therefore presumed and required to know the law.

The 47th chapter deals with the rigorous and cruel forest laws in these concise words: "All forests that have been made forests in our time shall be disforested." That is, they were no longer to be used to gratify the desires of the king for mere sport, but were to be reduced to a state of common ground.

By the 14th chapter we have this: "A freeman shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenment, and a merchant likewise saving to him his merchandise; . . . and none of the said amerciaments shall be assessed but by the oath of honest and lawful men of the vicinage. Earls and barons shall not be amerced but by their peers, and after the manner of their offense."

And the immortal twenty-ninth chapter declares: "No free-man shall be taken or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or otherwise destroyed; nor will we not pass upon him, nor condemn

him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right.”¹ This clause in the great charter is perhaps the most popular of any, and contains one of, if not the most, prized of all the guarantees of the liberty of the citizen. It is this which secured and still secures to all English-speaking peoples the great and inalienable right of trial by jury.

These two chapters of themselves, although there are other very valuable rights contained in this charter, are worthy of its being called “The Great Charter.” In these two chapters alone are contained almost all the vital principles of liberty, and of themselves would constitute a sure foundation for human freedom. It seems beyond question that there were “laws of the land” at the time of Magna Charta, but they had evidently not been enforced or enforced in a manner that was hurtful and injurious to the people. Hence the expressions “lawful judgment,” and “law of the land.” Lord Coke says that “the writs of assize, of novel disseizin, of mort d’ancestor, were returnable either *coram rege*, or into the court of common pleas, before Magna Charta.”

But the crowning glory of this great charter is contained in the language, “To none will we sell, to none will we deny, to none will we delay right or justice.” Have human lawgivers ever left a landmark more enduring, and imperishable? or one more pregnant with the essence of liberty, freedom and human rights? It contains the very heart and soul of justice. “To none will we sell”; to neither rich nor poor, high nor low—knowing no man, but all men shall be equal before the majesty and omnipotence of the law. Whether justice is demanded from the palaces of the rich or the cottages of the poor, there is a guaranty that right and justice shall be judicially administered according to the “laws of the land”—without fear or favor, without money and without price. It is here made known that for all time the bandaged eyes of justice shall not see nor know either suitor as she holds the scales with an equal and impartial hand.

By the twenty-first chapter, it is declared that "no sheriff nor bailiff of ours, or any other, shall take the horses or carts of any man to make carriage, except he pay the old price limited, that is to say, for carriage with two horses ten pence a day; for three horses one shilling and two pence a day. . . . Nor we, nor our bailiffs nor any other, shall take any man's wood for our castles, or other our necessities to be done, but by the license of him whose wood it is."

The Constitution of the United States by the fifth article of the amendments to the Constitution evidently in imitation of this provided that "private property shall not be taken for public use without just compensation"; and a similar provision is contained in our State Constitution, which goes even further and declares "without just and adequate compensation *first* being paid."

Weights and measures were had at the time of Manga Charta, for it is said, "one measure of wine shall be through our realm, and one measure of ale, and one measure of corn, that is to say, the quarter of London; and one breadth of dyed cloth, russets and haberjects, that is to say, two yards within the lists; and it shall be of weights as it is of measures." And so the fixing of weights and measures was firmly established. The power of fixing uniform standard of weights and measures is delegated by the Constitution of the United States to Congress, which is followed in turn by the different States.

"No bailiff from henceforth shall put any man to his open law, nor to an oath, upon his own bare saying without faithful witnesses brought in for the same." The word bailiff here probably meant judges or justices of courts, as sheriffs and bailiffs in Saxon times were the king's judges in criminal cases. The most remarkable instance of this was the illustrious Glanville, who had been for many years a justice and a sheriff and was finally made chief justiciary. So that no judge (or bailiff) could bring a man to his trial upon his own bare saying, but before he could do so, he must produce credible witnesses for that purpose. By putting "any man to his open law," meant putting him on his defense. This right was, and is, highly prized by the citizen and was a valuable guaranty of his liberties.

The thirty-fourth chapter provides that "No man shall be taken or imprisoned upon the appeal of a woman for the death of any other than of her husband." It seems that she might ask for the imprisonment of the slayer of her husband, but not of her child, mother, brother, sister, or any one else.

"No county court," says the thirty-fifth chapter, "from henceforth shall be holden but from month to month; and when greater time hath been used, there shall be greater; nor any sheriff, or his bailiff, shall keep his turn in the hundred, but twice in the year, that is to say, once after Easter and again after the feast of St. Michael. And the view of frank pledge shall be likewise at the feast of St. Michael without occasion; so that every man may have his liberties which he had, or used to have, in the time of King Henry, our grandfather, or which he hath purchased since." Note the language: "purchased since" indicating clearly what has already been outlined, viz.: that justice before Magna Charta could only be obtained by purchase.

The conclusion of the charter is in these words: "And for this our gift and grant of these liberties, and of others contained in our charter of liberties, of our forest, the archbishops, bishops, abbots, priors, earls, barons, knights, freeholders and other our subjects have given unto us the fifteenth part of all their movables." from which it also appears that rights were still purchased.

There were other important charter rights granted, some applicable mainly to England, but those mentioned are the principal ones and most important.

There is in this great charter no definite mention of any Parliament or lawmaking power unless the "general council of the kingdom" was so meant. Nor does it appear that the people at this time were much concerned about the matter. There is one subject, however, embraced in the charter which is confined to no period of the world's history—the collection of taxes. That "death and taxes are certain" seems to have prevailed at all stages of human society. In holy writ we find that "there went out a decree from Caesar Augustus that all the world should be

taxed." So far as is known, or at least as our research extends, the doctrine of "*stare decisis*" laid down in that decree is still followed and upheld, without a dissenting opinion from those in authority, and excepting always the overburdened taxpayer. While the decree has never been reversed, it has often been criticized, sometimes doubted, but rarely, if ever, overruled.

As originally signed Magna Charta contained sixty-three articles,* but many of them were only applicable to England and are of little value now except to the student of the history of our common law.

Guaranteed by Magna Charta as an established institution is that great boon to mankind, the right of trial by jury, or jury of one's peers. It is one of the greatest legal rights enjoyed by English-speaking peoples. This great Palladium of civil liberty is prized more, perhaps, than any other one legal blessing they now enjoy. Trial by jury practically in its present form has existed for more than a thousand years. Authorities differ as to what jury trial was in the beginning, and the particular practice then used. But we know it has grown from a very imperfect origin, and evolved itself along with other methods of trial, till it reached its present state of perfection. It was many long years before it was established and recognized as it now exists—the only accepted mode of trial of fact. The first conception of trial by jury in England seems to have originated in the practice of referring causes by the county court to a select committee of their number, who were always twelve, and why this particular number, no good reason or cause seems ever to have been discovered. Before trial by jury as we have it, the people settled their differences by a kind of natural tribunal composed of the neighbors of the parties, who comprised what would now be

*Framed and hung upon the walls of our State Supreme Court-room is what purports to be a *fac simile* of the original Magna Charta which contains only fifty-one (51) chapters, but from the best information obtainable the original Magna Charta contained sixty-three (63) instead of fifty-one chapters. It may be that some of the more unimportant chapters were intentionally omitted from the copy in the court-room. (See Hist. for Ready Reference and Topical Reading, vol 2, page 802.)

called a board of arbitration, and who settled their disputes among themselves, and without, of course, any forms of law or regular procedure.

Trial by jury in England is often alluded to as of Saxon origin. The first jury trial there of which we have any record was soon after the conquest and occurred in the Kent county court, between the Archbishop of Canterbury and Odo, Bishop of Bayeux. A special justiciary was sent down to hold the court, and it proved so turbulent and unsuited for securing justice that twelve freeholders were ordered to be sworn and empaneled, and served as the first jury in England.* Our present system is said to date from the beginning of the twelfth century during the reign of Henry II., when questions of fact relating to property were tried by "twelve *liberos et legales homines juratos*," who were sworn to speak the truth, though the principle of trial by jury was of much earlier date than that. The Romans had their trial by jury centuries before, and regular jury lists long before the British occupation. Indeed Rome had a perfect system of laws, while our Anglo-Saxon ancestors were mere barbarians and worshippers of the heathen deities Woden and Thor. And Solon had a perfect system of laws and procedure as early as 570 before Christ. Rome had her lists of those qualified to act as "*Judices facti*"—judges of the facts as they were then called. Under the Roman system there was some one invested with magisterial authority, some one who should represent the law and say what that was, and who had the power and authority to employ the whole force of the government in the administration of justice. And this officer the Romans called *magistratus*. On the other hand, there must be some inquiry made and determination had as to the facts, the evidence must be arrived at on the merits of the case and the persons who exercised these functions were called the "*Judices facti*." So it was, that the Romans had their judges of the law, and judges of the facts, pretty much after our own method. But during the Roman occupation of Britain the jury trial as practiced in Rome was widely departed

* Reeves' Hist. English Law.

from (though never entirely destroyed), on account of the system of despotism which seems to have shaken and finally undermined the Roman empire. Guizot, the great French author already quoted, thus describes the system: "He to whom the jurisdiction appertained, prætor, provincial governor, or municipal magistrate, on a case being submitted to him, merely determined the rule of law, the legal principle, according to which it ought to be adjudged. He decided, that is to say, the question of law in the case, and then appointed a private citizen, called the *judex*, the veritable juror, to examine and decide the question of fact. The legal principle laid down by the magistrate was applied to the fact found by the *judex*, and so the case was determined."

"Thus the principle of the Roman system," says another learned author, "was the separation of the law from the fact, which is essential to anything like a science of law, or any regular procedure. The system of trial under the Roman law, was the original of trial by jury, with which, in all essential respects it was identical. The essence of it was trial by sworn judges taken from the people, and open to objection by either party. And in criminal cases which were capital, there could be no sentence without an appeal to the people."

Thus it appears that trial by jury is not of English but of Roman origin. I am aware that there are those who stoutly maintain to the contrary, notably Sir Frederick Pollock and Dr. Maitland (in their history of English Law, 1895).

But if any other authority is needed to add strength to the foregoing conclusions, it may be found among others in Phillimore's "Introduction to Roman Law," in which he says: "It is hardly possible to conceive a stronger proof of that ignorance of the most ordinary topics connected with general jurisprudence which has been so long the characteristic of the most eminent lawyers in this country, than the notion so vehemently entertained and so popularly received, that the jury is of peculiarly English origin. The principle and essence of a jury—which involves the selection of judges unknown beforehand from a particular body, and gives to those judges the power of deciding

with certain restrictions, and under the direction of certain rules, on the question in dispute—is to be found in the institutions of many other countries. The trial of a citizen by other citizens, and a judicial authority, in causes civil as well as criminal, inherent in every freeman, was the corner-stone of the Athenian Constitution, and was thence transmitted to the Romans.” It is very natural to suppose then, it being conceded that the Romans had a perfect system of laws, including trial by jury, before and during their occupation of Britain, and that the inhabitants of the conquered provinces were barbarians and without a perfect system of laws, that they would adopt the institutions already implanted there by the Romans. And the history of our laws and institutions show, that from the time of the Saxon invasion, there was a gradual progress and struggle between the principle of “customs” as represented by the usages of the barbarians, and the principle of “reason” as represented by the Roman law. It is hardly to be supposed that a barbarous people without education, wealth or law, would originate civil institutions when those institutions were already being established by those who occupied by force the newly acquired country. Moreover, few of the early Saxon kings could either read or write, but made their marks with their fingers on the cross, or “signum,” which was in the form and denoted the sign of the (Maltese) cross, and was not merely a cross mark as used by the unlettered of the present day. It was mentioned of King Alfred as a remarkable fact that *he* could read. It may, therefore, be reasonably and safely concluded that the Saxons brought nothing with them but their “rude barbarian usages,” such for instance as the ordeal, and on the contrary that they appropriated what they found, and among other things, the Roman law, including trial by jury. And as the Saxon conquest of the country was slow and gradual, covering a period of five centuries or more, it is also reasonable to suppose that within that period there was a gradual amalgamation of the races and an assimilation of their customs, usages and laws, until it became one composite nation, with one composite system of laws. The great author just quoted aptly says,

"not only do the barbaric laws everywhere make mention of the Roman law, but there is scarcely a single document or act of that epoch which does not, directly or indirectly attest their daily application. It was the Roman Pandects which reappeared in the twelfth century; and when people have celebrated the resurrection of the Roman law, it is of the legislation of Justinian they have spoken, not of the perpetuity of other portions of the Roman law in the west; the Theodosian code, for instance, and all the collections of which it was the basis." Hence it will be observed that all through the Saxon laws will be found traces of the influence of the Roman laws upon the barbarous customs of the Saxons, and it was in the "union of this influence of the Saxon spirit with the principles of the Roman law that we get our whole system of judicature and jurisprudence, and especially our trial by jury." Jurors in the infancy of our system were mere witnesses, and hence the origin of the rule that they must come from the vicinage, or the hundred where the dispute arose, and the jurors or witnesses were supposed to determine the question at issue on their own knowledge of the facts. These hundredors, or jurors, were sworn originally to give a verdict of their own knowledge, and hence if there were no witnesses there were no jurors, for jurors were sworn, as already indicated, to find the truth upon their own knowledge. What mutations and evolutions time brings about! This qualification for a juror in Saxon times would now be a disqualification and cause of rejection upon the trial of any cause, civil or criminal. The expression of an opinion, or more accurately, the "forming and expressing" of an opinion, before he was empaneled as a trial juror would now exclude him from the jury box, or be cause for a new trial if a verdict had been rendered. Yet the purpose of our Saxon ancestors in securing the jury from the hundred was that "they should have knowledge of every contract made, and with that view provided that no contract of which they had no knowledge should be deemed valid," and a distinguished law writer says that this provision is repeated in the laws of all the Saxon kings. Thus, the laws of Ethelred and Canute require that

the witnesses shall be in the "bohr," or hundred, and the laws of Edgar make the connection clearer between this provision and the trial by jury; for they required that in every "bohr" and in every hundred, so many were to be chosen and set apart as witnesses, and in every hundred *twelve*, the number, be it observed, afterwards chosen for the jury. The witnesses were to be sworn to speak the truth in any matter that might arise and of them some were to be witnesses of every bargain made. (Laws of Edgar, 41-45).

This was practically procuring jurors for particular matters who had already known and judged of the facts, for jurors it must be remembered were witnesses, and these laws declared that before they were competent they must have a certain knowledge of the facts of the issue in controversy.

It seems agreed by most writers upon the subject, that the Saxons had no trial by jury when they first came to England, and further, that they clung to the ordeal till the reign of John. But as far back as the reign of Alfred we are told that a number of judges were executed for causing persons to be hanged either without a jury of twelve sworn men, or where the jury were not unanimous, or where they were in doubt. Thus history records the fact that he hanged Cordwine, because he judged Hackway to death without the consent of all the jurors. He executed Markes, because he judged During to death by twelve men who were not sworn. He sent Thurston to the gallows because he judged Thurington to death by a verdict of inquest without issue joined. He put to death Athelsan because he judged Herbert to die for an offense not mortal. He hanged Rumbold because he judged Lischild to death in a case not notorious, and without indictment. He executed Friburn because he judged Harpen to die, whereas the jury were in doubt in this verdict, and in *doubtful cases* it was the rule that we ought to save rather than condemn. He hanged Therberne because he judged Oscot to death for a fault whereof he was acquitted before. How many of our judges of to-day would suffer capital punishment for similar mistakes, I will not undertake to say.

It is a generally conceded statement that now "ignorance of the law excuses no one, except the court," and as in all general rules, so there is an exception to this, for a court may be excusable in not knowing the law, but never when it hears the law read.

Under the Saxon laws the bishops and ecclesiastics were not only allowed, but invited, into the courts to assist in the administration of justice. Indeed it is said that at this period about the only persons who had any notion of law were the bishops. The canon or ecclesiastical law, which was founded upon the civil, provided them with a basis, and gave the means of instruction in the administration of justice, and they naturally inclined against the uncivilized uses and customs of the barbarians and in favor of an intelligent and humane system of trial. We can easily see how intelligent clergymen would abhor the trial of human beings for their lives by clamorous "assemblies" which were once in vogue and which were more like a raging mob than what were intended as courts of justice, but which were conducted without even the sanction of an oath or the testimony of a witness on oath, or in truth, any of the safeguards of a judicial trial. Neither is it surprising that these learned ecclesiastics should shrink from the still more barbarous methods of trial by ordeal. Hence it is due largely to these clergymen, or lawyers, according to Coke and Blackstone, that there was a desire for a better and more civilized method of trial, and the practice soon became general of swearing those of the freeholders who were of the neighborhood, and had the best means of knowing the truth of the transaction, and testifying about it to the others. In this way trial by jury in the sense of trial by witnesses was begun and established in criminal cases whenever it was possible, that is, whenever there were witnesses, for, as before observed, where there were no witnesses there was no trial, at least after this method, and hence the ordeal was still resorted to at times because there were no witnesses, even up to the time of the conquest.

The hereditary (?) predilection on the part of our "brethren of the cloth" of the present day to take a lively interest in the

law and its manner of enforcement may find its origin in their learned ancestors, who occupied the dual relation of administering both to the spiritual and civil condition of mankind. Indeed, it is said that at one time our ecclesiastical Anglo-Saxon ancestors were the sole interpreters of the law, and it may be, that most of our laws, as already pointed out, being founded upon the moral law, as contained in the greatest of all law books—the Bible, the trend of their minds naturally runs parallel with their daily study in this line.

The so-called juries of primitive times, while popular with the people and the best method then known of settling questions of fact, were not in truth our jury of to-day. The verdicts of the Athenian dicasts, the *judices facti* of the Romans, the *witnesses*, *ordeals* and *compurgators* of the Saxons, and the so-called trials of the Scandinavians, while all helping to perfect the present system, were then but a faint idea of our conception of trial by jury.

In the early times from William I. to Henry II., along with trial by jury stood the duel, the ordeal, and other modes of trial. There were many methods of proof. "Sometimes by record; sometimes by battle; sometimes by witnesses"; and the combats were divided into personal and real combats. In the former, as in a personal combat for felony, no one could combat for another, but in personal actions the plaintiffs might make their own battles in person, or by loyal witnesses, for at that time no one could be a witness for himself. The defendants likewise had the privilege to defend their own right in person or with the bodies of their freemen. This method of duel was decisive in many matters; such as warranty of goods or land sold; writs of right; debts upon mortgage, and personal services rendered.

Another mode of trial in Anglo-Saxon jurisprudence was by the ordeal, and this method, singularly enough, seems to have been considered a religious ceremony. There were several kinds of trial by ordeal. Two of the principal ones were by water and iron, and were prepared under the personal direction of the priests, with great solemnity and many formalities. The person

charged with crime was to attend the priest for a certain number of days, usually three, attend mass, make his offering, and eat nothing but bread, salt, water and onions. Why such a terrible punishment should be inflicted upon the poor wretch beforehand is hard to imagine, unless it be to prepare him in a measure and give him a willing resignation—to die.

When the day of trial arrived, the defendant was required to take sacrament, and an oath that he was not guilty of the crime charged against him. And when the accuser also on oath renewed his charge, they were ready for trial. If the trial was by hot water, the defendant was made to insert his hand, or whole arm into it, according to the magnitude of the charge. If the ordeal was by cold water, the culprit's thumbs were tied to his toes, and in this attitude was he plunged into it. If the boiling water failed to scald or hurt (which was sometimes the case by connivance of the priests), or if he sank in the cold water, which would certainly happen, he was declared innocent. On the other hand, if the poor wretch was hurt by the scalding water, or if he swam with his hands and toes tied together, he was declared guilty. Another mode of trial by hot iron was by placing red-hot plowshares at unequal distances and requiring the accused blindfolded to walk over them barefooted, and if he accomplished this difficult and dangerous feat unhurt, he was pronounced innocent, otherwise guilty. It is not altogether strange, when we consider the nature and results of these trials by water and fire, that our superstitious ancestors of the distant past should have called these trials "*Judicia Dei*"—the miracles of God. This seems very strange procedure in this civilized age, and yet how many practicing lawyers have tested trial by jury in the present form with no more certainty of results than was the outcome of the trial by ordeal in ancient times?

When the defendant was to be tried by hot iron, they first sprinkled his hand with holy water, and then required him to take the iron in his hand and walk nine feet. After walking that distance he threw down the iron and hurried to the altar, where his hand was bound up for three days, when the band-

ages were taken from it, and if the hand gave any appearance of hurt, he was declared guilty, and if not, he was declared not guilty, and acquitted.

One other way of ascertaining the guilt or innocence of the prisoner was the trial by corsned or consecrated cake, by which the accused was required to swallow a huge chunk of dry bread, and if he accomplished speedily and successfully this gastronomic feat, he was declared innocent, but if it stuck in his throat, he was surely guilty, for only the throat of the guilty would refuse passage for consecrated bread. When this superstition did give way, it went to the other extreme, and even to this day, it is, in polite society, only considered "good form," while eating, to take small morsels. And as to the average criminal of the present day, he is not furnished "cake" of any kind and in any quantities, unless it be "corn cake."

It seems strange in this day that a practice so cruel and barbarous as the ordeal could have existed, since our ancestors were civilized enough to have law and procedure, and yet, it is within the power of a Georgia judge of to day to starve a jury into a verdict. The oath administered by the court at every term to those who have them in charge is: "You shall take all juries committed to your charge during the present term, to the jury-room, or some other private and convenient place, where you shall keep them without meat or drink (water excepted), unless otherwise ordered by the court." England had her "watering" process, as we shall presently see, and Georgia has her "starving process." It is a little remarkable that with such a law upon our statute books, no act of cruelty or hardship has ever been recorded against a Georgia judge! This speaks well for the ability and conscience of our judiciary. But on the other hand, while in England Jeffries was judge of the western circuit, with the laws favorable to the protection of life, liberty and property, he committed more judicial murders than all the Plantagenet and Tudor kings. It may well be hoped that this relic of barbarism, which is but an imitation of the ancient savage custom of keeping the jury "*sine cibo et aqua*," will soon

give way to a more humane statute, and one which cannot become an engine of oppression in the hands of a tyrant.

As late as the reign of Elizabeth, at the beginning of the sixteenth century, the last trial by battle occurred; and also trial by wager of law, which was by the oath of the defendant. This relic of the Saxon system of compurgators, where the result was determined by the number of men who swore they would believe the one party or the other, was brought down at least by the pleadings to this comparatively late date in the case of *Crispe v. Viriole*, reported in *Yelverton*.

The common law jury were "twelve of the hunderdors" sworn, and till the reign of Elizabeth it was cause of challenge to a juror that he was not a hunderdor. Thus by slow degrees, and covering a period of several centuries, trial by jury was established as it now exists, and it is guaranteed by most, if not all American Constitutions. With all its faults and imperfections, its uncertainty of accurate results, and oftentimes its entire miscarriage of justice, it is questionable whether any other system could approach it in arriving at the truth of the facts of a given case. Surely if the jury is composed, as our law says it shall be, of upright, honest and intelligent men, no other system will give so good results as an honest and impartial jury of twelve men, in determining what the truth of the issue is.

It is probably true, that within the experience of every practicing lawyer he has felt the truth of the old adage that the Almighty knows all things but the verdict of a petit jury, and he has often been tempted to say as did the late Henry W. Payne not long before his death. He is said to have taken a case as a matter of charity, in which a boy of fifteen years was charged with arson. Payne defended the boy and offered conclusive evidence that to all practical purposes he was an idiot and totally irresponsible. But the jury, although the court had virtually charged an acquittal, brought in a verdict of guilty. The presiding judge asked Mr. Payne if he would move for a new trial. Payne rose with a demeanor that was painful in its solemnity. "I thank your honor for your suggestion," he said, "but I am

oppressed with the gravest doubt whether I have the right to move for a new trial in this case. Your honor, I have already asked and received for my idiot client the most precious heritage of the English and American common law—a trial by a jury of his peers.” But notwithstanding these exceptional cases, it is a matter of surprise and congratulation how often, amidst the mass of conflicting testimony, the average jury, with no undue influences brought to bear upon it, brings in a verdict in accordance with the testimony.

As already mentioned, trial by jury is guaranteed by the Constitution of the United States and our own State Constitution. The seventh amendment to the Constitution of the United States declares that in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law. But it has been held that this provision of our Constitution guaranteeing the right of trial by jury is confined in its operations to the Federal courts, and each State is left free to amend or abolish the jury system in civil causes in their own courts.

Unanimity in jury trials, about which so much is being said of late, seems to have been required in the earlier period of our civilization, and a novel method was employed in order to compel it. This requirement might well be termed the “watering process,” which provided for the addition of fresh jurors in case of non-agreement, until twelve should be secured who would decide in favor of one party or the other. This principle, to some extent, is retained in our criminal law, so far, at least, as grand juries are concerned, who are composed of twenty-three men in order to allow for difference of opinion, which enables a majority of twelve to find or reject the bill of indictment. But it must be remembered that they return a bill on *ex parte* testimony, and simply to make a *prima facie* case. There has been much said and written, *pro* and *con*, as to the expediency of changing the rule which now requires all the twelve jurors to

agree to the verdict to be rendered. Many efforts have been made both in England and America to change the rule, so that the decision of a majority or two-thirds of the jury may become the judgment of the court. As far back as 1830, a distinguished committee of English lawyers, composed of such eminent men as Justices Alderson and Patterson, Baron Bosanquet and Stephen, recommended that after the jury had deliberated for twelve hours, and failed to agree upon a verdict, the party in whose favor any nine of the jurors decided should have judgment of the court, upon the verdict of the nine being entered of record. But this recommendation of these eminent men was never adopted, and the old rule of unanimity still prevails in England, as it does in most of the States of this Union. And it may well be doubted whether this time-honored rule, which has worked so successfully and satisfactorily for so many years and even centuries, should be abrogated at this time. Mr. Choate, our minister to England, and who is a great lawyer and statesman, defending this rule before the American Bar Association in 1898, ably and well said: "The great objection to dispensing with the rule of unanimity and requiring the decision of a majority or two-thirds or three-quarters of the jury to control, is the certain danger of hasty and therefore of unjust or extravagant verdicts. It is not to be forgotten that with every verdict, when carried into judgment, property passes, or claims to money or property are determined. The rule so long insisted upon by the English and American people, that the right to the property or money in question shall not pass until the whole jury is satisfied by the clear preponderance of evidence, that it ought to pass, is not too great a security by which the sacred right of property ought to be held. The right to property, as Mr. Webster said at Plymouth in 1820, is the corner-stone of civil society, and its sanctity cannot be safely invaded or impaired. I do not forget that certain judges of the very highest repute, to whom we owe all deference and honor—Mr. Justice Miller among them—have declared themselves in favor of some departure from the ancient rule of unanimity; . . . that by

the Constitutions of three or four States, which include less than ten per cent. of our people, a verdict by nine of the jury has been expressly provided for, and that in Scotland a verdict by three quarters of the jury has long been permitted.* But better fifty years of experience than a whole cycle of theories. I believe that the great mass of the people, whose rights and interests are herein chiefly involved, are satisfied with the rule as it now stands, and cannot and ought not to be argued out of it. The next formidable charge against the common law trial by jury is to accuse it of a great share in the law's delay. But I deny the charge absolutely and altogether. There is nothing in the whole of litigation so short, sharp and decisive as the ordinary jury trial. As compared with the abominable system of references, which is a practical substitute for it, a trial by jury is like the lightning's flash. These references hang on for months and generally for years; they wear out the life-blood of the parties, and pile up an accumulated mass of expense for the fees of lawyers, referees, and stenographers, fatal to the patience and endurance of clients." "Why I have one on my hands to-day," says this great lawyer, "which began in September, 1864, has survived both parties, all the witnesses, and a long succession of referees, and will still live on to be buried with the surviving counsel." And Judge Kent, who has been termed the "Father of American Jurisprudence," in discussing the right of a court to discharge a jury because of inability to agree, says in the case of *People v. Olcott* (2 John: 301): "The doctrine of compelling a jury to unanimity by the pains of hunger and fatigue, so that the verdict in fact be founded not on temperate discussion and clear conviction, but on strength of body, is a monstrous doctrine that does not stand with conscience, but is altogether repugnant to a sense of humanity and justice. A verdict obtained under such circumstances can never receive the sanction of public opinion." One illustration of the value and importance of the unanimity rule to the life and liberty of the citizen will suffice. The writer defended

*In France a majority is sufficient to convict.

in part a client charged with murder. On the first trial the jury stood eleven for conviction and one for acquittal. A mistrial was declared by the court. On the second trial the jury were prompt and unanimous, upon the same evidence, in finding the defendant not guilty, thus declaring that the one juror in the first trial was right and an innocent man allowed his liberty. Under the operations of the majority rule it is horrible to contemplate what the result of that first verdict would have been.

Let the old system stand, with its rule of unanimity, and all its privileges and blessings! It has withstood the shock of time and the assaults of its enemies, and has proven itself the great bulwark of civil liberty and human rights. This ancient landmark towers above all the rest, to use Goldsmith's beautiful metaphor:

"As some tall cliff that lifts its awful form,
Swells from the vale and midway leaves the storm;
Though round its breast the rolling clouds are spread,
Eternal sunshine settles on its head."

There is a disposition among our modern lawmakers, and even our courts, to change, and sometimes to utterly uproot these ancient landmarks. In some cases, it may be granted, the change is beneficial, but in most it is deleterious and detrimental to the administration of justice. Blackstone says that "apprenticeships are held necessary to almost every art, commercial or mechanical; a long course of reading and study must form the divine, the physician, and the practical professors of the law; but every man of superior fortune thinks himself a born legislator."

This proneness to change established laws and customs by legislation is the cause of much mischief. Members of the law-making power, with a case in conflict with ancient established principles, easily conceive the idea of changing the law, introduce a bill to remove a landmark hoary with age, that has withstood the storms of ages, been a blessing to mankind, and at one fell blow uproot the wisdom and experience of centuries. In this connection I am reminded of what General Butler said to a young law student who was being examined for admission to

the bar, and who answering no questions upon any of the branches of the common law, appealed to the General to examine him upon the statutes, with which, he said, he was familiar. "Young man," said the General, "I'm afraid you wont do. You may be ever so familiar with the statutes, but what is to prevent a foolish legislature from repealing all you know?"

Chancellor Kent, the great American commentator and jurist, in speaking of the abolition of the rule in Shelly's case by a State legislature said: "The judicial scholar on whom his great master, Coke, has bestowed some portion of the gladsome light of jurisprudence, will scarcely be able to withhold an involuntary sigh, as he casts a retrospective glance over the piles of learning devoted to destruction by an edict as sweeping and unrelenting as the torch of Omar." While this tendency to legislate and decide away the old landmarks is intended to simplify and make clear, it tends often only to mystify and make more uncertain that which was clear before, and there is room to suspect that in some cases the cause of this destruction may be the same as exhibited by the law student who, being asked by his preceptor, to state the rule in Shelly's case, innocently answered that he was not aware Mr. Shelly ever had a case.

I had hoped within this hour to glance hurriedly at a few of our own State landmarks, but this paper is already too long, and my apology is, want of time to make it shorter. But you will pardon a passing reference to our new landmarks—the civil procedure and pleading acts of 1887 and 1892-3, which are destined to become historic in our State, and which marked an era of progress and revolutionized our system of pleading and practice in our courts, and though adhering in the main to the old landmarks, these, it is believed, are steps in the direction of progress, for it may be said of the law, as of any other science, that it is a progressive one; and it may well be hoped that this new departure from the old and often senseless forms of pleading under the common law may be made permanent. It is difficult for a Georgia lawyer of to-day to fully appreciate, or appreciate at all, the fictitious forms of pleading in our courts a generation or two

ago. The common law pleading of other days may well be compared to "the deed or other instrument" of old Cæsar Kasm, mentioned by Judge Baldwin in his "Flush Times of Alabama and Mississippi," which "was drawn up with such infernal artifice and diabolical skill that all the lawyers in the county were unable to decide by a legal construction of its various clauses whom the negroes belonged to, or whether they belonged to anybody at all."

I have given a passing glance only to a few of the more prominent landmarks which have been erected and maintained by the experience and wisdom of the age, for the government and guidance of the generations past and to come, and in the language of the wise man, yea, the wisest the world ever knew, "Remove not the ancient landmarks which the fathers have set." Let them remain as "lamps unto our feet and lights unto our paths." These ancient monuments, these historic landmarks of the law, will live in the ages to come as they have in ages gone. Time may destroy the marble shaft at Washington, erected in memory of the "Father of his Country"; our own Stone Mountain may crumble into dust; Mount St. Elias and Mount McKinley may be leveled with the plains; the waves of the sea may wash into sand on the seashore Gibraltar's Rock; but these imperishable monuments, and the immortal memories of those who, during the centuries past and gone, have builded in wisdom and justice these everlasting landmarks of the law, and made them what they were and what they are, will never perish from the earth.

APPENDIX B.

REPORT OF TREASURER.

Z. D. Harrison, Treasurer,

In Account with Georgia Bar Association.

To cash balance from last report.....	\$	427 18	
Dues collected since last report.....		1,260 00	
By Voucher No. 1, H. R. Goetchius.....	\$		4 16
2, Chas. L. Davis			19 00
3, Augusta Chronicle.....			2 00
4, Morning News.....			2 80
5, Constitution Publishing Co .			4 50
6, Enquirer-Sun			3 00
7, O. A. Park.....		100 00	
8, L. E. Bleckley		7 35	
9, J. W. Burke Co.....		22 00	
10, W. F. Blue.....		37 50	
11, Hotel Aragon.....		4 50	
12, Franklin Printing & Pub. Co.		4 25	
13, do		358 05	
14, do		13 80	
15, do		55 25	
16, O. A. Park, Secretary.....		200 00	
17, Z. D. Harrison, Treasurer...		100 00	
Exchange on checks		50	
Balance.....		748 52	
<hr/>			
	\$	1,687 18	\$ 1,687 18

Examined and approved by Executive Committee, July 2, 1901.

BURTON SMITH, Chairman.

APPENDIX C.

REPORT OF COMMITTEE ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

To the Georgia Bar Association:

Your Committee on Judicial Administration and Remedial Procedure beg leave to make the following report:

The first obligation of organized society is the just and impartial administration of the established law. In its primitive period this procedure is usually crude and often disorderly, and therefore a graduated judicial system of the courts of any State is the product of time and growth.

As it was in the beginning, the Georgia judicial system is "without form and void." The several courts are without that mutual relation and graduated system that should characterize the courts of a great State. As now organized, without reference to the municipal and probate courts, our judicial system consists of justice courts, county courts, city courts, superior courts and the Supreme Court. Between these courts there is no properly organized coordinate relation. They are a mere patchwork palace, each performing its several functions, and to a great extent independent of the other. To illustrate: A suit involving one hundred dollars may originate either in the justice court, and county court, the city court, or the superior court, and go to the Supreme Court. If it originates in the justice court or the county court, it secures two appellate trials. If it originates in the city court or the superior court it receives but one.

To permit a case involving less than one hundred dollars, which arises in the justice court, to be appealed from court to court, and thus wear its weary way through all the courts, is a

waste of time, money and judicial machinery; besides, it operates to make the fixed charges upon small litigation heavier than it can bear and therefore suitors of limited means are often constrained to forego the assertion of their rights because it is too expensive to maintain them.

Indeed, whenever the costs, charges and expenses arising from the successive trials of a case, exceed the amount involved in litigation, the litigants behind the case, as well as the case itself, need some "remedial procedure."

We beg leave, therefore, to make the following report:

1. That all civil cases, where no constitutional question is involved, of less than fifty dollars, instituted in the justice court, may be appealed to a jury in that court, with the right to a writ of *certiorari* to the city court judge or the superior court judge, whose final judgment shall be conclusive.

2. That all such cases instituted in the justice court, exceeding fifty dollars and under one hundred dollars, may be appealed to the city court and there tried on appeal, and from this court be taken to the judge of the superior court, whose final judgment shall be conclusive.

3. That all such cases originating in the counties where there is no city court may be appealed to the superior court, and the final judgment of the judge of the superior court shall be conclusive.

4. That all such cases under five hundred dollars originating in the city court and all cases in the county court may be taken by bill of exceptions to the judge of the superior court, under proper rules and regulations, whose final judgment shall be conclusive.

5. That all such cases exceeding five hundred dollars, originating in the city court may be appealed to the superior court and there tried as other cases originating in that court, with the right to except to the Supreme Court.

6. That all cases originating in the probate court under five hundred dollars may be taken by bill of exceptions to the judge of the superior court, whose final judgment shall be conclusive

This reform would seem to be very desirable, as the small estates of widows and orphans should not be made more scant or be entirely dissipated by the costs and expenses of litigation.

7. That all cases arising in the probate court exceeding five hundred dollars may be taken by appeal to the superior court and there tried as other cases in that court, with the right of exception to the Supreme Court.

8. That all cases originating in the superior court exceeding five hundred dollars, and all cases involving constitutional questions, after trial may be taken to the Supreme Court by bill of exceptions.

It will be observed that while cases of limited amounts do not reach the Supreme Court, yet the principle of a reviewing court, which should always be maintained, has been fully preserved and every case will be passed upon by a court for the correction of errors.

The purpose of these suggestions is to save the expense of taking cases under five hundred dollars to the Supreme Court, and is not intended as a relief to that high tribunal, and if made effective by proper legislation, will preserve to the poor rights that are now surrendered in consequence of their poverty, but which should be asserted and maintained in the interest of common justice; for this needless burden has often constrained litigants of limited means to forego their rights because they were unable to bear the expense of maintaining them, and thus justice was defeated and wrong encompassed.

Where the amount is more than five hundred dollars the litigants, as a rule, are more nearly on a parity as to their financial status and ability to maintain their rights, and besides such cases can better bear the heavy fixed charges incident to the court of last resort, which, from the very nature of the case, cannot be as accessible or inexpensive as the local courts.

As the civil courts are without mutual relation to each other, so are the criminal courts equally out of line and needlessly expensive, both to the prisoners and to the public. As now constituted, the exclusive trial of all felonies is vested in the superior

courts, and the authority to try misdemeanors is concurrently granted to the city and county courts. In the country counties of Georgia this operates as a very great hardship and needless burden upon the accused as well as upon the public treasury. To illustrate: In one of the country counties of this State the jail fees in 1898 were in round numbers, \$1,800. In 1899 the jail fees were in round numbers, \$2,100. When the superior court of that county convened the records show that about seventy-five per cent. of the prisoners confined in the jail pleaded guilty. Of those thus confined in jail there was but one charged with a capital offense. It will be observed, therefore, that at least seventy-five per cent. of this jail expense was mere waste, both to the accused and to the public. Waste to the accused because the penalty imposed did not necessarily give the defendant credit for the time incarcerated in jail; and a waste to the public because it was utterly useless to maintain such a jail expense when the prisoners were clamoring for the privilege of pleading guilty.

Of course in the city counties where the superior or criminal courts, like the door of a certain undesirable region, are always open, this could not occur, but in the country counties where the superior court meets for one or two weeks semi-annually, the percentage of time that prisoners are detained in jail is very much augmented and extended.

If the condition of the county just indicated is a fair index of other similar counties in Georgia, that is, if the jail fees range from \$1,800 to \$2,000 per annum, it will be observed that in the 137 counties (except the two or three where there are large cities and the courts are constantly in session) the waste must be enormous, and therefore the general welfare and the intelligent administration of public affairs, as well as the consideration of the right of the accused before trial and the due process of law, demands that such a condition be relieved.

We recommend, therefore:

1st. That the city courts in the several counties having such courts, in addition to misdemeanors, be authorized to try all

felony cases that may be reduced to misdemeanors by the recommendation of the trial jury, and that a bill of exceptions be allowed from this court to the judge of the superior court, whose final judgment shall be conclusive. This would give relief to the congested condition of the jail, save the public the needless expense of maintaining these prisoners in jail and relieve the the prisoners of the needless detention before trial, and thus accentuate in the public mind the speedy and just administration of the law.

This recommendation is not intended to deprive any official of the costs to which he may be entitled. The solocitors-general, the sheriffs and the clerks, like all public servants, are entitled to a fair and just compensation, and if these recommendations should be carried into effect the legislation effectuating it should provide for the compensation of these officials.

2d. That capital offenses and the cases now exclusively reserved by the Constitution be retained in the superior court, with the right to except to the Supreme Court.

3d. That the Constitution be so amended as to authorize the legislation herein recommended.

These recommendations are intended as mere suggestions. They are not the formal report of your committee, as the several duties of the individual members of the committee made it impracticable for all of them to get together at a fixed time and place; but it has been approved by a majority of the committee, and therefore these suggestions are made with the hope that they will evoke in this body and in the public mind such consideration and discussion as will ultimately evolve and mold a graduated and symmetrical judicial system, which will render just and uniform and as inexpensive as possible the administration of justice in this great State.

Respectfully submitted,
HAMILTON MCWHORTER, Chairman.

APPENDIX D.

REPORT OF COMMITTEE ON LEGAL ETHICS.

Mr. President:

Among the standing committees appointed under the by-laws of this Association is the following:

"8. A Committee on Legal Ethics, who shall be charged with the duty of reducing to the form of rules or canons the principles of ethics regulating the relations of lawyers to the courts, the public, their clients and each other; with the further duty of taking such action as they may deem best, in case any departures from these principles by members of the bar of the State come to their notice or are brought to their attention."

The scope of the duties devolved upon the committee, therefore, cover two classes of subjects: (1) The reduction to the form of rules ethical principles governing the public and private relations of lawyers. (2) The duty of taking appropriate action in case of a violation of such principles by the members of the bar of this State, whether members of the Association or not.

No grievances have been brought to the attention of the committee during the past year. The lawyers have been decorous, dutiful and industrious, sharers with other portions of the business community in the common prosperity, and hopeful of the future in view of the vast strides which are everywhere being taken in the field of social and industrial well-being.

In reference to the part of the by-law quoted above, which concerns itself with the formulation of rules for the guidance of lawyers in the domain of morals and ethics, it is not to be understood that the committee appointed for any one year of the Association's life is expected to prepare and present a complete system or code of ethics exhaustive in scope and authoritative in nature. The work of the annual committees is necessarily frag-

mentary, and suggestive rather than legislative. Annual accretions, added by the annual reports of successive committees, may, after the lapse of years, result in the preservation upon our records of a system or body of principles in this important part of the lawyer's life and work, which will prove instructive and valuable, and no inconsiderable aid in the upbuilding of lofty character. Honor and rectitude consciously realized within in his own breast and publicly exhibited without in his own bearing and conduct, is of infinitely more concern to the lawyer than pecuniary success. Better die poor and live rich in the appreciation of posterity than accumulate fortune by questionable means, with the inevitable judgment of his cotemporaries, 'he is a smart lawyer but an undeniable scoundrel!' A brilliant and well-informed mind, lax in principle and in moral restraints, may indeed find work to do, and enough work to do to earn the reputation of being a successful lawyer. In every community are a certain number of clients who have soiled linen to rub and rinse before judges and juries, and such *patrons* need the services of a man to stand at the fuller's tub who is not too fastidious to foul his fingers. The public sentiment of the bar ought to be strong enough to destroy his influence, and so discourage, if not defeat, his employment. The upbuilding of such a sentiment, strong enough to be effective, is a work of slow growth, and it is the considerate and patient work of the Bar Association to foster it by constant iteration, and reiteration of principles sometimes like to be overlooked in the physical hurry and intellectual waste of a busy lawyer's life.

1. *A truly great lawyer must be a truly good man.* As has been well said, "Let it be remembered and treasured in the heart of every student, that no man can be a truly great lawyer who is not in every sense of the word, a good man. A lawyer without the most sterling integrity may shine for awhile with meteoric splendor, but his light will soon go out in the blackness of darkness. It is not in every man's power to rise to eminence by distinguished abilities. It is in every man's power, with few

exception, to attain respectability, competence and usefulness." Sharswood's Legal Ethics, p. 168.

The word "good" in this connection is used as a moral rather than a religious distinction. A perfect morality may, as the theologians assert, involve a recognition of the claims of our blessed Saviour, and an humble and inflexible reference of conduct to the standard He set up, as the motive of action. Mr. Gladstone lost nothing by his Christ-likeness. The restricted use, however, of the term "good" as applied to the "great" lawyer now under discussion at least covers an enlightened rectitude of heart and of life. Many lawyers who were great and good men in the professional sense have not been able to accept the creed of any denomination of Christians, but familiarity with the inner struggles of such men often reveal their profound striving after light in this quarter, the discovery of which might be avowed consistently with that intellectual truthfulness which has developed in them into a habit of mind. Perhaps this is due, in part at least, to the insistent demand which the lawyer is ever making for accurate and well-ascertained facts; his refusal—not wilful or perverse, but inevitable from his hourly training—to relax this demand, and his consequent inability to disassociate himself from the material and the real, and to enter the realm of faith and hope which, to many of his professional brethren, not abler or sincerer than himself, indeed, is at last more real than the material—the most real of all!

However this may be, the good lawyer who is also a great lawyer, is characterized by the utmost rectitude of intellect, of heart and of will as it finds expression in conduct. He is *the faithful one, the loyal one*, possessed of an immovable fidelity to himself, to the court, and to his client.

2. *He should be faithful to himself.* Truthfulness of intellect is the most difficult achievement in the domain of morals. A lawyer has no right to pronounce conclusively upon the truth of a fact or principle until he has discovered it to be true, and he has no right to conclude that he has made the discovery until he has exhausted his means of information. How important is

this statement! How much of essential loyalty is embraced! Extreme diligence is necessary to prevent another from practicing a deception upon him. The extremest diligence is necessary to avoid practicing a deception upon himself. At the very outset he is to ascertain what the facts of his case are. The thought of ultimate success in his client's cause is altogether foreign to the inquiry at this stage of it. The question is not what will win, but what is true. He must resist his own desire and rebuke his client's desire, which self-interest is always obtruding, to twist or warp the facts, and he must do this in the spirit of the true scientist. An investigation into the facts of a case cannot be too thorough. It was remarked by Lord Tenterden, "An attorney who allows his client to proceed without pointing out to him the expediency of ascertaining the evidence, and that in the very first instance, and well considers the probable result, is guilty of grossly absurd and culpable negligence." 2 Chitt. Gen. Pr. 21.

It is a duty which a true man owes to himself as well as to his client, and until he has exhausted all attainable means of certainty he ought not to be satisfied. Usually the facts are susceptible of a measurably exact ascertainment if the investigation is promptly made and conscientiously pursued. I know of no part of a lawyer's work wherein he is more appreciated by his client. Business men are extremely discerning. They are narrowly observing the conduct of their employed advocate from the very moment of placing the case in his hands. An irresistible feeling of confidence and satisfaction springs up in the breast of the client when he discovers that his lawyer is *hungering after truth—the truth of his case*—and that he is not going to rest satisfied until it is discovered and incorporated into the record. More lawyers fail here than elsewhere in the work of a case.

But the same spirit of fidelity is to govern the lawyer in his investigation into the truth of the law. Sidney Smith, on a hot day like this, wanted to strip himself of his flesh and sit in his bones. Would that we lawyers could strip ourselves of our

hearts and sit in our naked intellects when we are inquiring into the truth of the legal principles which we are to come subsequently to press upon the attention of the judges. The advocate's influence and power before the court would be increased beyond estimate if it were recognized that his aim and desire was not so much case-winning as truth-telling. The lawyer who permits his desire to warp the course and conclusion of his inquiry into the law of his case is committing a species of intellectual suicide. He is inflicting a vital blow upon himself, upon his own intellectual part, for which no amount of success in the cause will compensate. If an investigation honestly and impartially conducted, either into the facts or law of a case, drives the mind of an upright man to a conclusion adverse to the case of the client far better to tell him so plainly. He may take the case to another lawyer as a result of this fidelity to his true interests, but when he has worried through days and months of preparation, incurred heavy expenses, and finally lost his case, and his new-found lawyer has exacted and received a fee to which he was never entitled at all, the penitent client will probably return from eating the husks of swine, and himself remain loyal and true to professional truth and loyalty.

3. *The lawyer should be faithful to the court.* Chief Justice Gibson, in *Rush v. Cavanaugh*, 2 Barr. 187, says: "It is a popular but gross mistake to suppose that a lawyer owes no fidelity to any one except his client, and that the latter is the keeper of his professional conscience. He is expressly bound by his official oath to behave himself, in his office of attorney, with all fidelity to the court as well as to the client; and he violates it when he presses for an unjust judgment."

The writer of this report agrees with the Chief Justice. If a lawyer urges the adoption by the court of a legal principle which he knows to be unsound and pernicious, he loses out of his own conscious manhood more than he can hope to put into the pocket of his client. Shame outweighs shekels. Principles frequently arise in the path of the lawyer not satisfactorily defined in the books. As to these it is his duty to present and urge the

view that makes for his client, leaving the court to weigh opposing arguments and determine the right rule; but when the advocate in his investigation of his client's case has found respectable authority opposed to the view he is urging and announces nevertheless, as is sometimes done, "I venture the assertion, your honors, that no respectable court in Christendom has ever held to the contrary," he is simply lying, and as he is a learned man and under oath, it is a compliment to call it perjury.

Bishop Burnet, in his *Life of Sir Matthew Hale*, tells us: "Sir Matthew Hale abhorred those too common faults, of misreciting witnesses, quoting precedents or books falsely, or asserting anything confidently by which ignorant juries, and weak judges are too often wrought upon." Chief Justice Sharswood, of the Supreme Court of Pennsylvania, in one of his lectures on the Aims and Duties of the Profession of the law, delivered before the law class of the University of Pennsylvania, in quoting Sir Matthew Hale's view, says: "One such false step in a young lawyer will do him an injury in the opinion of the bench and of his professional brethren, which it will take years to redeem, if, indeed, it ever can be entirely redeemed." The writer once heard a lawyer read and insist on a proposition contained in the opinion of a dissenting judge, without ever disclosing that the majority of the court was opposed to that view in that very case, and therefore opposed to his client's recovery. An instance is narrated of a lawyer who admitted to the court that he had made orally a certain agreement with adversary counsel, but stood upon his rights to insist upon the rule requiring the agreement to be in writing—a claim which the court was compelled reluctantly to allow. The client gained his case—the lawyer imperiled his standing before his judges. Victory purchased at the price of perfidy is dearly bought.

In passing, allow me, without disparaging the *equal claims* of other sections, to recognize and record the high professional standing which the lawyers of the Savannah, Augusta and Macon Bars have uniformly maintained.

The word of some lawyers, once given and received, has, with them at least, the obligatory force of a statute.

Another duty which the lawyer owes to the court, is to maintain its dignity and authority. An equal temper, under an adverse ruling, and a gentlemanly forbearance even under the provocation of irritableness upon the part of the bench, is a prime grace in the advocate. The judges mean well. They are frequently overtaxed. They are subject to weariness, as other bread-winners are. They are entitled to the confidence, consideration and forbearance of the gentlemen of the bar over whom they exercise authority, and over whom they might legally exercise a much more autocratic authority if they would. Let it be remembered that Georgia has never had on the woolsack a corrupt judge. Overworked, underpaid, often sore pressed to maintain their families in moderate dignity, the stain of corruption has never marred the purity of the ermine they wear.

Lord Campbell declared that "it is rather difficult for a judge altogether to escape the imputation of discourtesy if he properly values the public time; for one of his duties is 'to render it disagreeable to counsel to talk nonsense.'" Another judge adds: "Respectful submission, nay, most frequently, even cheerful acquiescence in a decision, when, as is most generally the case, no good result can grow to his cause from any other course, is the part of true wisdom as well as civility. An exception may be noted to the opinion of the bench, as easily in an agreeable and polite, as in a contemptuous and insulting manner." (Sharswood's Legal Ethics, p. 53.)

Counsel should seek no private interview with the judge with a view to influencing his judgment, but all should be done openly and frankly, as considerations of honorable self-respect suggest, and due respect to the person of the judge himself imperatively require. Judges should themselves politely but firmly rebuke the first approaches of counsel, who, under the guise of social attention, or other indirect means, endeavor to impress their views in a pending case. One or more such rebukes, kindly administered, will fix the character of a judge, and set

the tone of the bar in reference to this important matter. What Chief Justice Sharswood says in this connection is so judicious that it is deemed worthy of preservation in this report. He says: "Another plain duty of counsel is to present everything in the cause openly in the course of the public discharge of his duties.. It is not often, indeed, that gentlemen of the bar so far forget themselves as to attempt to exert privately an influence upon the judge, to seek private interviews, or take occasional opportunities of accidental or social meetings to make *ex parte* statements, or to endeavor to impress their views. They know that such conduct is wrong in itself and has a tendency to impair confidence in the administration of justice, which ought not only to be pure but unsuspected. A judge will do right to avoid social intercourse with those who obtrude such unwelcome matters upon his moments of relaxation."

4. *A lawyer owes his utmost fidelity to the client who entrusts to him the duty of securing the protection of his character, person or estate.* He does not sell himself to his client. He owes him no duty, the performance of which would violate his own conscience, or induce him to lend his assistance to the doing of an immoral or disreputable act. He does not contract to abuse his adversary, or witnesses, or to exhibit a disrespectful or insulting bearing toward opposing counsel. It is a stainless plume he wears into the thick of the fray, and its purity is itself one of his most effective weapons. The indiscriminate abuse of witnesses is a common evil and deserves strong condemnation. Nothing touches the public so nearly in the administration of justice, produces such enduring irritation and exasperation, as the unnecessary and unjust laceration of the feelings of a business man whose only offense is that he stated the truth as he understood it, and who cannot be made to feel any responsibility for its exciting the ire and evoking the reckless vituperation of a hired advocate, whose only motive can be the gratification of the basest passions of a weak jury, or the unreasoning malice of a vengeful client. The cases are rare indeed, where a great man, who is also a good man, at the bar feels called upon to en-

gage in discourteous or inconsiderate speech toward the court, opposing counsel or the witnesses on the other side. But while this is true, he enjoys the confidence of his client. He has accepted his cause, and owes to him the utmost fidelity. All of his industry, his learning, his logic, his eloquence, his coolness and nerve in battle, and it may be added, all the influence and power that a lofty character and a gentlemanly demeanor entitle him to exert upon the court and jury, he is under contract to employ in the service of his client. He is the sacred and the secret repository of his client's affairs of a legal nature, often of his most important concerns, and his bearing toward his client ought to be of such a nature as to insure and secure his respect and confidence in a relation terminable only by death.

Wolsey's prayer on the accession of Sir Thomas More, may be not irreverently breathed over the truly useful lawyer:

"May he..... do justice,
For truth's sake, and his conscience; that his bones
When he has run his course, and sleeps in blessings,
May have a tomb or orphan's tears wept on him."

What has been above stated is to be understood and accepted as an expression of my own personal views, for which the other members of the committee are in no wise responsible, no other member of the committee being present, and your chairman having had no opportunity to submit this report to their inspection or to receive their suggestions or criticisms thereon.

Respectfully submitted,

HOWARD VAN EPPS,
Chairman.

[Note.—Those who desire to pursue this subject further would do well to read Judge Sharwood's little book on Legal Ethics, to which I have several times alluded in this report. It would be well if that work were made a text-book in Law Schools, and elsewhere, where young gentlemen are being fitted for the Bar.]

APPENDIX E.

DELAYS AND TECHNICALITIES IN THE ADMINISTRATION OF JUSTICE.

PAPER BY REUBEN R. ARNOLD, OF ATLANTA.

No system by which government metes out justice through the agency of courts has ever been found perfect. Neither the wisdom of the ancients nor that of the present wonderful age has been able to devise any plan by which the attempt to administer justice, according to law, can in every case be done without delay or hardship. Necessarily, any system of law which undertakes to regulate the conduct of all the members of a community must, as a result of uniformity, operate unjustly in particular cases. All that we see around us in nature is the result of law, and in its uniform and impartial operation no condition of worldly power is respected; its heavy hand is laid equally on prince and peasant. All death in nature results from the transgression of some law, wisely devised for some great, final purpose, but operating in the particular instance, so far as our finite minds may be able to see, without apparent reason or justice. It is not the purpose of this paper to decry against the observance of those rules which conduce to certainty, accuracy, and the obtaining of truth from the best sources, in the administration of law, but in a hasty manner to make suggestions about some matters which seem to me to encumber and fetter the law and to obstruct the attainment of justice.

Those matters which mainly delay and defeat justice in our courts are matters wholly of procedure and practice. Little objection can be made to the rules of law governing the substantial rights of litigants. They are the result of the accumulated

wisdom of the ages, and have been refined upon and changed to suit the ever-varying conditions of humanity. The object of practice and procedure should be to enable us to get as simply and rapidly as possible to those rules of law which govern a case upon its merits. Too often, I regret to say, these rules are made an instrument, not to arrive speedily at the justice of the case, but to delay, and in many cases to defeat justice altogether.

It would seem that the greater part of the time of the courts should be taken up in considering the merits of cases. Without having made any special examination, I will venture to state that the majority of questions raised in the cases which appear in the last ten volumes of the Georgia Reports are questions apart from the merits of the controversy, and relate to practice, procedure, evidence and pleading. The time of the court which should be expended in dealing out justice upon the merits of the case is wasted on trifles, upon the question of whether the party got into court exactly right; whether he could amend a clumsy declaration and set up the truth, or whether, because the declaration is inartistically drawn, the court can never hear the truth of the case, whether the case ought to have been continued, or whether the judge in his instructions to the jury deviated a hair's breadth from technical abstract law, when no injury could possibly result, or whether a witness was allowed to testify to an immaterial opinion. These, and other like questions and trifles, vex and worry the courts to such an extent in many cases as to obscure and conceal the real issues.

The common cry about the delay in the administration of criminal justice is not well founded. There is little danger of a failure of justice in a criminal case where the accused is in jail and is under indictment. His person is securely held to answer the court's sentence. Criminal cases are triable at the term at which the indictment is found. There is no six-months imparlance term, as there is in civil cases. The indictment is sufficiently technical if the offense is described in the language of the Code. The courts invariably give way to the trial of criminal cases. The real trouble is in the administration of civil justice, and that is where delay and technicality hold full sway.

There is a distinction between those rules regulating procedure and practice which have some great policy behind them, and those which are without reason, except that they are a heritage from former times. Necessarily there must be rules regulating the conduct of parties in court. That system of procedure is best, however, which has the simplest rules. A plain statement of the case, free from formality, and a plain statement of the defense, likewise free from formal statement should be the pleadings, and these we now have in a measure in the Neal Act. And this brings me to the first great reform that, in my judgment, should be made in the pleading. Our Code breathes a liberal spirit towards amendment. It allows amendment to any extent, with only the limitation that no new party shall be brought in, nor shall any new cause of action be introduced; but these two limitations on the right to amend have been so construed by the courts as to almost emasculate the provisions of our amendment law and render them little better than useless. A just demand should not be defeated by the defective statement of it by an attorney. Substance should not give way to form. It ought to be enough that the general nature of the claim is stated in the petition; that the transaction complained of is actionable; that the defendant has legal notice of it by service, and that the court has jurisdiction. If this be the case the law should allow any amendment which relates to the transaction referred to in the declaration, even if it does make legally complete a defective cause of action, and even if it makes, in a legal sense, a new party. Can any sensible man say, calmly, why, with a prayer to the court to have his rights meted out to him, with the defendant served with the court's process, and before it to have his rights determined, the court should, with a microscopic eye, look at the declaration, construe it against the pleader, and if some link in the chain of facts which makes up the case be left out, refuse to allow it to be supplied because it would make a new cause of action? What trifling with human rights! Of course, the same liberality should be allowed in amending the defense in the case. It is not meant to say that when substantial amend-

ments are brought in, the case should proceed to trial without postponement, if surprise is occasioned. On the contrary, the court should be clothed with the broadest discretion to grant postponements to such time as is reasonable to allow the parties to meet the new issues.

Not only should amendments be allowed which, while relating to the transaction declared on, introduce technically a new cause of action, or a new party, but the plaintiff should be allowed to bring in any other claim against the defendant of the same general nature with that declared on, whether it grew out of the same identical transaction or not. There is no sense in allowing a plaintiff to originally join two or more causes of action against the same defendant, sounding in contract or tort, and not in allowing him subsequently to bring in the same matter. Here again the court should have power to grant a reasonable postponement. If the several distinct matters declared on in an original declaration could be tried together, they could as well be so tried if brought in by an amendment. So far had the pendulum swung against the allowance of amendment up to the time of the Ellison decision in this State, that there was scarcely a conceivable amendment, outside of a mere change in names, or dates, or similar small things, that was not held to create a new cause of action. It was argued that as the declaration stood, when demurred to, it made no cause of action, that it required an amendment to complete the case, and that, therefore, this made a new and distinct cause of action. By this narrow process of reasoning, the very spirit of the law of amendment was throttled. Our Supreme Court revolted against it in the case of Ellison against Georgia Railroad, 87th Ga., p. 691, and it is to be hoped that the principle there laid down will be adhered to and extended. The court in the second head-note well states the reasons for allowing amendments in these words:

"Amendment is a resource against waste. It proceeds on the principle that it is better to preserve what has been done and improve on it than to throw it away. There is as much reason for

correcting important defects as the less important, and those of substance as those of form."

But as long as the limitation remains in our statute that no amendment shall introduce a new cause of action, or bring in new and distinct parties, there will be uncertainty and hair-splitting distinctions over the allowance of amendments. The whole thing should be swept away by one broad statute, allowing any amendment, whether of form or substance, which is necessary to complete the cause of action evidently aimed at, or intended to be declared upon, by the pleader. Indeed, our present law is narrower than the common law which allowed new counts to be added by amendment. See 1 Tidd's Practice, 697-698. And this principle of universal amendment should apply to all bonds and appeals; affidavits which begin proceedings, and every conceivable proceeding in court, whether original or otherwise. No hardship can possibly result if the court is clothed with the discretion to grant postponements. What waste will be prevented, what precious time of the courts taken up in going partly through with cases will be preserved and made of use. How many cases will be saved the bar of the statute of limitations. How many cases of admitted legal rights will be preserved. Justice should not be sacrificed to symmetry in procedure.

But it is said by some that strict pleading and procedure make good lawyers. I deny it. It makes narrow lawyers; lawyers without breadth. And, much as we may regret it, justice is not entirely administered for the benefit of lawyers, and we ought to recognize it. But it will make better lawyers, greater lawyers, broader lawyers, when they reach for the merits of a controversy rather than the side issues and the trifles. Good lawyers will be in as much demand as ever. Lawyers will prosper when the courts reach rapid and substantial results. The result will be that when a lawyer is employed in a case, instead of undertaking to manage it so as to acquire some technical advantage, he will recognize at once that the case will be tried upon its merits. One great step towards the attainment of justice will have been made when all quibbling about the limitations upon

the right to amend is forever set at rest by removing them. Honest cases should not suffer because of mistakes of counsel, if the court can, without inconvenience or injustice, remedy the mistake. As has been said by one law-writer, the court-house is not a gladiatorial arena, in which the gladiators contend for points, in the persons of the lawyers, with the judge occupying the position of referee.

To hurry on to other subjects. Delays beget technicalities, and technicalities beget delays. Take this one subject of amendment. By a technical construction of the law an amendment is not allowed. The case is dismissed. There in court sits the plaintiff, with his demand against the defendant. Suppose it is a just one. The defendant knows exactly the nature of the claim, notwithstanding his lawyer argues to the court that it is not well stated. The court knows the exact nature of the case, notwithstanding his learned mind may not admit that it is stated with legal sufficiency. The jury is there to deal out justice on the facts; but because of some want of technical conformity to the law, some leaving out of a date, some failure to allege jurisdictional facts, or to clearly state the obligation the defendant was under, or the breach of it by him, the case goes out of court, and if the plaintiff would have justice must be brought over again. But suppose the plaintiff's counsel had so defectively stated his case as to make legally no cause of action at all, and so that the real case would not be a renewal. The statute of limitations might, in the meantime, have interposed and barred his right, and thus, not only is justice delayed, but absolutely, in a case where the whole truth is known by all the parties, where the demand is perfectly understood, where the transaction intended to be declared upon is perfectly clear, justice is outraged, by the denial to this man of his rights. The law should not be so dull, so blind, as not to know and see as much as any ordinary citizen would understand from a statement made out of court. Surely, gentlemen of the bar, no other business could run on a principle which wasted its resources in such a way. The universe could not run upon any such principle. The planets could

not revolve in their courses around the sun, if such trifles, if such slight jars, could throw them forever and eternally out of their orbits. In every other line of action mistakes are remedied. If a builder, in constructing a house, has his roof to fall, he does not demolish the entire building, walls and all, and then begin the whole over again. If a child is born maimed, it is not put to death, but our humanity demands that we do our best to make it whole. Defects everywhere are repaired. Nothing that we see around us is destroyed for defects which admit of remedy, much less for trifling defects.

Another great thing in Georgia which stands, an impassable barrier in the way of speedy trials, is our antiquated six-months imparlance term. At the time this six-months term became a part of our law, it required months to travel from here to the metropolis of the country; travel across the Atlantic involved one quarter of a year; the stage-coach rolled its slow way along the roads; the trackless forests were untouched, save by wild beasts and wilder men; straggling settlements of pioneers hugged the seacoast; a journey from this coast through the center of the county would have equalled for its painful progress and adventure a penetration of the dark jungles of Africa's interior; frail animal power moved the world on land, in manufacturing, traveling, carrying and communicating. And upon the sea, mankind depended alone upon the fickle winds. The six months term was, amidst all these conditions, abreast of the period.

But times have changed. What a metamorphosis has been worked by the modern wizards who have made captive the very elements; who have reduced the lightning to subjection, and made it their willing slave to quicken the earth's intelligence; who have harnessed the giant, steam, to ponderous monsters of iron, which traverse the earth with the hurricane's speed, and stopping not at the ocean, have made its watery wastes the easy instrument to bring the east and the west together, and to make as one the distant nations of the earth. Where once roamed the red man in the silent forest now are heard the hum of the

factory and the whistle of the locomotive; where once were scattered huts now stand the towering buildings of the great city. Now, the titanic forces of nature, chained and driven by the mind of man, flash our thoughts, and speed our commerce, and fight our wars with such engines of destruction that the physical brawn and muscle which once moved and dominated the earth, even the legions of Rome, would be as feeble in opposition as a sparrow against an eagle, a child against a giant.

But, in spite of all these changes, the appearance term remains with us. It is about as appropriate now as constructing a magnificent vestibuled train, placing it upon a track which could withstand a speed of sixty miles an hour, and hitching up to it, as the motive power, a team of oxen.

Nobody can defend it; nobody has ever undertaken to defend it. To delay justice is to defeat it. Every lawyer knows the danger of delay in a lawsuit. Witnesses die. Recollections fade. Parties become insolvent and a thousand other things interpose themselves, by the mere lapse of time, against just results. Originally, what was called the imparlance term in the common law courts of England was for the purpose of staying the proceedings while the parties had a chance to settle, as well as to plead. This reason is ridiculous. Most litigants do not go into court until the settling stage is past. He wants to litigate. The only just, the only sensible reason, for any delay of the trial, is to enable the parties to prepare for it. Not only should the six months term be abolished, but all terms of court should be abolished. It is an artificial institution, without rhyme or reason, which makes the superior court lie dormant, as a common law court, out of term time. It ought to be in possession of all its functions and powers at all times. Why should its power cease at any time? What sense is there in a term? Why not make a case returnable some particular number of days after it is filed, require the defendant, within a particular number of days after he is served, to file his defense, make the case ripe for trial a certain number of days after the defense is filed, and invest the judge with discretion, if either of the parties ap-

ply to him and give sufficient reasons, to postpone it to some further reasonable time. Of course, in the sparsely settled counties of the State, where court cannot be held over twice a year, the courts could finish the business at semi-annual sittings, hearing in the meantime any case of special urgency. Abolish terms altogether. Abolish the return term especially. In the city of Atlanta the delay resulting from this six-months term was so insufferable that in our two city courts, where a vast volume of business is transacted, we have a term every sixty days. All cases are triable at the first term. There is no imparlance term, and the system has worked so admirably that the superior court tries but few cases in which it has not exclusive jurisdiction, under the Constitution. The stagnation which resulted from the old system made it so that our courts were little aid to the business world. A court which could not give a judgment on a plain note, in case of no defense, under six months and twenty days, would be of very little help to anybody, so little, in fact, that parties would sacrifice their demands at ruinous reductions rather than risk the delay, and the consequent dangers attending it. Right here let me say that nearly every State in the union has this quick procedure except Georgia. It is impossible to understand why a State, otherwise as progressive as our State, which has freed married women, which has removed the disqualification of witnesses for interest, which has abolished the distinction between law and equity, why a State otherwise so progressive should retain this awful, this staggering, this senseless statute upon its books. That there may be some who will defend this term I cannot doubt. Any existing thing, which is hoary with age, will find its defenders. But an institution which is without reason cannot and ought not to stand. If our law provided for the disqualification of witnesses for interest, or allowed the marital rights of the husband still to attach to the wife's property, practically enslaving the wife, or allowed the husband, as at common law, still to chastise his wife with a rod no larger than his thumb, I have no doubt some would defend it and really and honestly believe themselves right. The attachment of some

of our lawyers for antiquated, senseless laws is a kind of fetish worship, a sort of blind adoration. I believe if an earnest effort was made in the legislature to repeal it, that there would be no trouble whatever to do it. The general notion that it would be difficult to repeal it is largely imaginary. There has never been any real, live, earnest effort to do so. No man on the floor of the legislature could give a sensible reason against the repeal of this law.

The next fruitful source of delay, and one which clogs our Superior and Supreme courts with trash, is the great solicitude which our law exhibits in allowing the review of any case, no matter how small or trifling, and no matter how unimportant the questions involved. The smaller the case the greater solicitude our law seems to have for granting facility of review. An ordinary litigant, in the superior court, with a case involving ten thousand dollars, has only the right to take his case to one court of review, the Supreme Court; but a litigant in a justice's court, over a five-dollar hog transaction, has double the right of having his case reviewed. The justice court litigant not only has the right to have his case twice reviewed upon errors of law by the Superior and Supreme Courts, but he has the right to two trials upon questions of fact alone. The right to review is given in Georgia in inverse ratio to the importance of the case. Surely, the justice court litigant's right of review ought to end in the superior court, after two trials on the facts. The superior court ought to occupy the same relation to the justice's court, so far as the right to review is concerned, as the Supreme Court occupies to the superior and city courts. Perhaps, it would be wise to have a provision allowing the judge of the superior court to certify, if important questions are involved, that on account of their importance, a bill of exceptions be allowed to the Supreme Court. Again, cases in the superior or city courts, which involve small amounts, say under five hundred dollars, ought to rest satisfied with the final judgment of these courts, unless the judge certifies that the question is of sufficient importance to warrant a bill of exceptions. The great ma-

majority of the cases appealed to the Supreme Court involve nothing on earth but questions of fact. Half the time of that court is taken up with useless arguments of counsel upon questions of fact. These improper matters clog up the docket, and throw it behind with its business. As in the superior courts, so in the Supreme Court, should terms be abolished, and a case should be returnable a particular number of days after the bill of exceptions is signed. Frequently a delay of one day in filing a bill of exceptions causes a loss of an entire term of the Supreme Court. This should not be. If the Supreme Court had small litigation out of its way, and was up with its business so that cases could be speedily heard, cases might be returnable in twenty or thirty days, in a manner similar to the practice of the Federal Court of Appeals, without all the loss of time involved in getting to a particular term.

Another matter which needs attention is the continuance of cases for slight causes; the granting or refusing of continuances or postponements ought to be vested absolutely and without limitation in the discretion of the trial judge. Time and again have we all seen motions to continue which came up to the technical requirements of the law for the granting of continuances, in which it is perfectly apparent that the motion is made for delay and that no injustice whatever would be done by compelling a trial to be had; yet in such cases the court is powerless, with all the parties before it, to go to trial. There are so many things which are present to the eye and mind of the trial judge upon an occasion like this, and which cannot be reviewed, that his judgment ought not to be the subject-matter of review. Continuances of cases for the absence of a witness whose evidence is only cumulative, or to prove immaterial facts, or where the opposite party will agree upon the testimony of the absent witness, ought not to be encouraged. Neither should continuances for the absence of counsel, where there are other counsel in the case, or where the party has had notice that his counsel would be absent for a sufficient time to enable him to employ other counsel, be allowed. I have actually seen cases where I suspected that lawyers

were employed for the reason that they were known to be in bad health, and could put off the case indefinitely. If a motion to continue is meritorious, if an injustice would really be done by forcing the parties to a trial, the trial judge ought certainly to be able to take care of them. The truth is that it is so easy to continue a case in Georgia at the present time, that it may be considered an entirely voluntary act, and one involving unanimous consent, to get an important case to trial at its first call.

Another rule coming down to us from the common law, which blocks litigation uselessly, is the rule requiring unanimous agreement by juries in civil cases to a verdict. If we are to have trial by jury, in the name of common sense, let that body decide the matter by the majority, just as all other bodies decide questions. The majority of the Supreme Court can settle the law upon any disputed question. The majority of the legislature can make new laws, and repeal old ones. The majority of the people can elect those who shall govern the whole people. Really, in every conceivable situation, legal or otherwise, the majority controls, and yet, this old relic of barbarism still remains a blot on our law. Why is an ordinary civil case more important in its determination than the grave matters of public import to which we have alluded, which can be decided in every instance by majorities? Several of the States of the union, particularly in the northwest, have adopted statutes allowing majorities of two-thirds or three-fourths of the jury, as the case may be, to make a verdict in civil cases. By all means this ought to be the law in Georgia. It would then be out of the power of one ignorant or corrupt or obstinate man to stop the wheels of justice. In every other condition of life things come to a result. It is possible legally for a case to be tried one hundred times in our trial courts before a jury upon questions of fact without any result being reached at all.

Our claim law needs remodeling. The claimant should not be permitted to withdraw his claim. After having delayed the plaintiff he should be required to meet the issue he has made. Nor should the claimant be allowed, as at present, to swear to a

general conclusion that he owns the property, or it is not subject. Too secure a cover for fraud is here furnished. The claim should set out the title in about the same manner as a suit to recover the property, and should show wherein the claimant's title is superior to the plaintiff's right to subject the property. Thus, many an unfounded claim might be disposed of, either by ruling the sheriff for taking it, or demurrer at the first term.

Many other subjects might be discussed, but the limited time allowed for this paper forbids entering upon the discussion of them. Our rules of evidence might be a little broader upon the admission of testimony. There should be no disqualification of witnesses for any cause. The act rendering certain witnesses incompetent on account of the death of the opposite party is a step in the wrong direction. While the temptation to perjury is great, as any man must admit, it is no greater than when a party to a case is swearing in his own behalf. The true rule is, not that the temptation to lie shall disqualify, but that the temptation to lie should be taken into consideration by the jury in passing upon the case. At last, it is a question of greater or less temptation, and our policy has been formally established by the Evidence Act of 1866 to open wide the gates, and let everybody testify, and let the jury look at the situation and say who should be given credit. No court or legislature ever made a mistake in taking the liberal side of any question. Many cases fall through because the only witness who knows the facts cannot tell them on account of the death of the opposite party. Think of this fearful situation, and can any amount of temptation to lie, when the jury has all the opportunity to review this temptation and give it weight, make it right to take away the property of even one man who has a meritorious case and who would have told the truth about it?

Most of the absurdities in our law are handed down from the common law of England, which is, in the main, unsuited to our present conditions, and which we have so wisely and widely departed from in many important particulars. The barbarous married woman's law, the rule excluding witnesses for interest, the

rule against amendment at common law, the rule requiring unanimity in jury verdicts, the imparlance term, the law that the wife's earnings belong to her husband, these, and many other absurdities, are the inheritance which comes down to us from the common law, and I long to see the day when the last vestige of them is swept from the books.

APPENDIX F.

LAW AND LAWYERS.

PAPER BY J. C. C. BLACK, OF AUGUSTA.

Of law, in a general sense, it may be said it has God for its author, the universe for its kingdom, and order and harmony, and truth and justice for its objects. It rules the mineral, the vegetable and animal kingdoms. It holds its benign sway in the realm of the material, the intellectual and spiritual. We find it in the dewdrop that glistens on the bosom of the blushing flower and the great ocean with its wide expanse of unsounded depths. It holds glittering stars and blazing suns and revolving worlds in their appointed places. The earth "was without form and void" until it reigned, and should it cease chaos would follow. It furnishes a rule of action for the worm that crawls in the dust and the imperial bird that soars with tireless pinion in highest air. It preserves order on earth and harmony in heaven. All intelligences, angelic and human, are under its dominion. It has to do with all affairs, secular and religious, temporal and eternal. It is in the earth and sea, and air and sky. It pervades all life and without it death would be everywhere. Love we are told is the *summum bonum* of life. Love is greater than hope, which has done such mighty things. Love is greater than hope, which sustains in trial and inspires the noblest endeavor. Love is eternal, but love is the fulfilling of law. "In the fullness of time God sent his Son into the world, made of woman, made under the law." His life was a life of obedience to law. His death was a vindication and satisfaction of law. When we would see the fullest expression of God's love for men, we betake ourselves to the cross on which the Saviour of men died. It is no less the emphatic and awful expression of God's regard for law. The

evidence of man's love to God is conformity to his law. Under the old dispensation obedience to law was better than sacrifice, and the Psalmist sang "The law of the Lord is perfect converting the soul," while the great apostle of the new declares, "The law is our schoolmaster to lead us to Christ." We cannot think of God as being without authority, and this involves the idea of law. To strip Jehovah of authority would be to destroy his power and this would impair or destroy his benevolence and goodness. If love most adorns his throne, law sustains it. The very exercise of mercy and pardon presupposes law. The gospel does not abrogate law, it is only another and better law. As to mere human law, while it is necessarily imperfect in its enactment and enforcement, what would we do without it? It is indispensable. Without it society would be disorganized, government would cease, civilization would lapse into barbarism. It enters into all the affairs of our every-day life. It abides with us in the home. It stands sentinel at the door and protects from the intrusion of the unwelcome and violent. While we sleep it watches. When we awake, it is by our side, and goes with us into the highway, the field, the shop, the office and the sanctuary. It stimulates us in our work by assurance that we shall enjoy the products of our labor. It protects us in our amusements and our worship. It has concern for everybody and every interest, not only liberty and property, but life, body, health and reputation. The most needy are the objects of its special care. It levies tribute to take care of the destitute and helpless. It shields the weak from the oppression of the strong. It protects the strong from the envy and hatred of the weak. It confers rights upon us before we are born. It hovers over our cradle. It guards us all the way to the grave, and even then does not abandon us, but lingers there to protect the grass and flowers love has planted from the touch of desecration. As far as may be it is a husband to the widow and a father to the orphan. Its ears will not listen to falsehood. Its eyes are not clouded by partiality nor distorted by prejudice. Its hands are a shield for the innocent and a rod for the guilty. Its feet tread the

paths of justice and equity. It speaks, and its voice commands what is right and forbids what is wrong. It thinks—its underlying principles are founded in reason. It has feeling—it makes allowances for human passions and frailties. It has sympathy and is merciful. Its whole being rejoices in the truth; truth in its entirety—the whole truth; truth unmixed—nothing but the truth. The temple in which it dwells should be pure; its altars undefiled, its ministers clean.

“Justice, sir, is the greatest interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the improvement and progress of our race. And whoever labors on this edifice with usefulness and distinction, whoever clears its foundation, strengthens its pillars, adorns its entablatures or contributes to raise its august dome still higher in the skies, connects himself in name and fame and character with that which is and must be as durable as the frame of human society.” So spake Daniel Webster. Such necessary and honorable work is the avocation of every true lawyer. The claim of his profession to rank among the most useful and distinguished pursuits that have or can ever engage the thought and stimulate the effort of man is amply vindicated by the characters of those who have been its votaries and their contributions to the well-being and progress of the race. They have stood as the champions of civil and religious liberty. Unawed by force, unbribed by station, they have defied the power of tyrants and fearlessly defended popular freedom. The history of the progress already made in popular government is luminous with their eloquent and fearless advocacy, and any assault upon it now would awaken their prompt and powerful resistance. Ever ready to oppose the oppression of power, they have been as firm and unyielding in their support of law and order. In character, in intelligence, in public spirit, in useful service to community and state and country, they are foremost. Venerable for its antiquity, worthy of the highest respect and admiration for its history, the necessity

for our profession springs from the conditions of organized society and it must continue as long as such society exists. To it in the future, as in the past, must be largely left, by the unwritten law of common consent, the enactment and execution of our laws, State and Federal, and from the necessity of the case not only must their construction devolve upon it, but the restraints within constitutional limitations, so essential to the general welfare must be enforced by an intelligent, upright, impartial, fearless judiciary chosen from its ranks. With unfaltering purpose we should maintain the honor of our profession—preserve its exalted rank and dignity, and promote its beneficent mission. Its high tone should never be lowered. It is not a trade for mere barter and sale. The true lawyer's office is not a shop. It is no place for mere bargain-counters. It is rather a school where he must, by diligent and unremitting study, qualify himself mentally to instruct the ignorant, strengthen the weak, defend the oppressed, prevent wrongs, terminate contentions, promote justice, inculcate respect for and obedience to constituted authority, and to do this, it should also be a shrine to truth and right, at which the spirit shall reverently kneel and on which the heart shall offer its tribute of sympathy and love.

The lawyer's avocation is a business, but it is more than that. He must possess qualifications not demanded in other pursuits. These must be ascertained by examination and duly certified—at the threshold he is put under the sanction of an oath, he is invested with prerogatives, and holds an office which makes him a part and an indispensable part of one of the necessary departments of government. He should not indulge in the Pharisaical pretension that he is better than other men, but to forget or ignore that, in a sense, he is separated from other pursuits, however necessary and honorable, is to lose the highest and justest conception of the rank and station of his profession—and to drag his calling down to the level of a mere business is to degrade the high office it should be his pride, as it is his duty, to honor and exalt. Who could think of the judge on the bench as pursuing a mere business? Who would not instinctively feel that such

conception of his station was false and degrading? He sits as a minister of justice, he is clothed with the majesty of the law, he represents the power and sovereignty of government. As the mouthpiece of the law, pronouncing its decisions, he enters the judgment by which property is taken, liberty is restrained, the stigma of infamy is branded upon reputation—life itself is forfeited. Six men constitute the tribunal of last resort in determining questions affecting the highest interests of the more than a million and a half people in the State of Georgia. Like interest of seventy-five or eighty millions of freemen are committed to nine men. We are accustomed to speak of the three great departments of our system of government as equal and coordinate, but the judicial department may declare null and void the joint work of the other two. Neither the executive nor the legislative, nor both combined, without flagrant usurpation could interfere with the judgment of a court while it is not only within the province but the solemn duty of a *nisi prius* court sometimes to set aside an act which, after deliberation and discussion, has been passed by one and approved by another department of government. An upright, capable, fearless judiciary is the last hope of the people for protection against themselves. The people, the source of all power, wisely recognize the necessity for a written constitution which shall set limits beyond which they themselves cannot go, and in times when tumult and passion sway popular thought and feeling, from the bench alone must come the voice of supreme commanding authority which shall curb the spirit that would override these limitations. That rights so sacred have been so well guarded, interests so valuable so well preserved, and power so vast wielded without abuse, is in honor to human nature, weak and imperfect as it is, and an undying glory to the profession which has and must continue to furnish the bench of our country with the men, who we may confidently expect, as their predecessors have done, will continue to shed luster upon their exalted stations, bless their country with their services, and achieve for themselves the highest distinction. In the structure of our government there is a special court of the

temple as to whose ministrations our profession is the tribe from which alone the priests who stand at its altars must be selected. While the whole structure is a temple where there should be some sense of responsibility—some feeling of sacredness akin to that which should pervade the sanctuary of the Lord, not all who are qualified to enter its precincts are admitted to its inner chamber. This is reserved for the bench and bar and from it the barterers should be driven as the sellers of doves and money-changers were scourged from the Temple at Jerusalem. No greater calamity could befall the State than the infliction of an incompetent and corrupt bench, and the only safeguard against this is a competent and upright bar. The stream cannot rise higher than its source. We should insist upon something more than a mere knowledge of what is in the books, more than the honesty which promptly pays over what is collected, more than zeal and fidelity to the client's cause; we must stand for a high tone, for exalted sentiment, for lofty ideal, for just pride. There is a spirit abroad intensely and, I venture to say, dangerously commercial. It is in our social life, it has to some extent invaded the church, while in our political life it places a higher estimate upon the effort which secures a local appropriation for a useless public purpose than the enactment of good or the defeat of bad legislation. One may see the most flagrant, shameless combinations in the House of Representatives of the United State Congress on the River and Harbor Bill—a bill of which it has been truly and aptly said the worse it is the more friends it has. Deaf to voices of the past—voices that come from the history and experience of other peoples, voices that speak the solemn and emphatic warnings of the sages and statesmen of our own country, this spirit would trample upon the sentiments and traditions and policies of centuries, ridicule the principles of the Declaration of Independence, and establish and maintain a government without the limitations of a written Constitution, which is utterly incompatible with our American system. For commercial gain it would violate the plighted honor of the

government, pledged by solemn treaty. Such commercialism ought to have no lodgment in our profession. Here, as everywhere, the laborer is worthy of his hire. The lawyer is entitled to adequate and honorable compensation. He should not degrade his profession by cheapness nor corrupt it by covetousness. For his learning and skill, and the time and labor expended in their acquisition, he should be compensated, but there is something more and better than the income in mere money it may furnish him. We need not reestablish the relation of patron and client, which existed in the early institutions of Rome, between the patrician and plebeian, and bound the former to render the latter assistance and protection in his lawsuits without compensation. We need not revive the ancient order of Jurisconsults, who, on public days of market or assembly, walked in the forum and gratuitously imparted needful advice to the meanest of their fellow citizens, or who, as their years and honors increased, at the dawn of day seated themselves at home and awaited the coming of their clients without the hope of reward. We need not reenact the Cincian law, which prohibited the patron or advocate from receiving any money or other present, or adopt the law of England, that a counsellor or barrister cannot maintain a suit for his fees, but we may profit by realizing that the historian of the Decline and Fall of the Empire tells of a day when "the noble art which had once been preserved as the sacred inheritance of the patricians was fallen into the hands of freedmen and plebeians, who, with cunning rather than with skill exercised a sordid and pernicious trade."

If the lawyer's avocation is a mere trade,—if the quest of his pursuit is only to get money, let him adopt the modern commercial methods; let him employ whole columns of newspapers to laud his wares, send commercial travelers on every road, occupy vacant lots with bill-boards and utilize the gable ends of barns along public highways. To do so would shock every sense of propriety and decency in and out of the profession.

The lawyer's life, like all life, has its discouragements. The sense of responsibility oppresses. The difficulty of finding the

truth in the domain of facts and the correct legal principles in the domain of law often embarrasses. Who has not anxiously asked, not what, but where is truth, and had no answer, but the echo of his wailing cry. Who has not sometimes felt like exclaiming after the most diligent research and study

“ Pain of doubt, fatigue, despair,
Pain of darkness everywhere
And seeking light in vain.”

He must unravel many a tangled web. He must search a whole day for two grains of truth in a bushel of error. He must tax and strain his mental and moral perception to distinguish between truth and error clad in its stolen garb. It is startling, distressing to think how much is undetermined in law. It would seem that after all these years, after so much sedulous and intelligent effort, with so many volumes of statutes and decisions, it would not be difficult to find the law in any given case. But we all know this is not so and it is discouraging. It is appalling and disheartening to know how much one ought to know and how little some of us do know. There are three volumes of the Code of Georgia with 6,036 sections in the first two and 1,277 in the last volume, an aggregate of 7,313, more than one for every year since the creation of the world, to say nothing of the countless annotations and the acts of the legislature since the adoption of the Code. When statutory law is found, close attention must be paid to what it says, and then it is to be interpreted, a cardinal rule for which is to ascertain the intention of the legislature, something neither *in esse* nor *in posse*, for a case has arisen which was never contemplated, and if it had been nobody can tell what the legislature would have intended. Nor is the perplexity relieved by the other cardinal rule which considers the old law and the mischief, for the mischief of the old is often multiplied and complicated by the new. If it were possible to know or to find out all the law written in the Statutes of Georgia, we have another body of laws. There are the United States Revised Statutes and the Congress in session annually for months at a time. There are 112 volumes of Georgia Reports,

180 volumes of United States Supreme Court Reports, to say nothing of the reports of the Districts and Circuit Courts of Appeals and other State Reports, and then there is the list of qualified and doubted and criticized and explained and overruled cases, and the dicta and the conflicting decisions. And the end is not yet. The legislature and Congress must meet, and when convened they seem to feel that they are under a constitutional obligation to legislate—the courts must sit and we can but sing, though in plaintive strain, the familiar words “Still there is more to follow.”

There is another discouragement very hard to bear. Sometimes with respect for the court, full recognition of the fact that he may not be unbiased, the lawyer irresistibly feels with the earnestness and strength of an honest conviction that the law has inflicted wrong and injustice.

The lawyer's life, like all life, has its temptations. The undue love of success, of applause, of money, envy, jealousy, resentment, all these may assail him, and he is in constant need of the prayer to be felt in his heart and uttered by his lips, lead me not into temptation, but deliver me from evil. But there are encouragements. He may justly command and enjoy the respect and esteem of his fellows; usefully and honorably serve his community and State; contribute to the intellectual and moral improvement of society in common with other citizens and discharge the special functions to which they are not admitted and which constitute him an officer of court and a minister of justice. The diligent, intelligent, conscientious pursuit of his profession may bring him reward more valuable than money, as the spiritual is more to be desired than the material, the enduring than the vanishing, the eternal than the temporal. His profession furnishes an incentive to the acquisition of the broadest and most varied knowledge and learning, not only for the mental enjoyment it will afford himself or the admiration its display will excite in others, but for practical utility. He may absolutely need knowledge of the construction and operation of a common piece of machinery or some ancient lore, and may usefully em-

ploy the highest classical learning. He may enter every realm of knowledge, not for thorough exploration, but on short excursions, encouraged by the hope that he may return with something that will be useful as well as ornamental. He may lay under contribution the art of the rhetorician, the convincing reason of the logician, woo with persuasive or overcome with the force of impassioned eloquence. He may, by honorable methods, attain the highest station, wear its honors with dignity, use its power and influence for the welfare of his fellows and society, but whether his career is distinguished and conspicuous or not, he may, with unsullied character, stand in his appointed lot, serve well his day and generation, and when he falls on sleep leave behind him a good name, which is rather to be chosen than great riches.

APPENDIX G.

THE ANCILLARY JURISDICTION OF FEDERAL COURTS OF EQUITY.

PAPER BY W. A. WIMBISH, OF COLUMBUS.

Mr. President and Gentlemen of the Georgia Bar Association:

There is no more sublime conception within the range of thought than that of abstract justice; certainly there can be no higher human endeavor than to promote its equal dispensation. In the execution of this purpose judicial tribunals have been created and the science of jurisprudence has been devised. The perfect administration of perfect justice, softened by the touch of mercy, is unattained and inattainable; but the striving after it distinguishes every wholesome civilization and measures social progress.

Far back in the history of the race we find evidences of the existence of this idea, which afterwards ripened into the benign principles which lie at the foundation of equity jurisprudence.

In its practical application, equity has its share of the imperfections inherent in even the best efforts of mankind; nevertheless, while the ways may frequently be dusty and the paths be devious, the end in view is as clear and as steady as the light which flushes the northern sky on a winter's night. I regret that I cannot invite you to pause with me in contemplation of the lustrous beauty of justice. If you will follow I must lead you along humbler courses, with no opportunity to turn aside in search of flowers.

In discussing the ancillary jurisdiction of courts of equity, I have chosen the courts of the United States, both because they are now the only existing courts which regard the pure equity

practice, and because of the fact that their peculiar constitution has given rise to a novel and interesting jurisdiction which they have been forced to assume and exercise.

In some few of the States courts of equity have been preserved as separate tribunals; but in all the jurisdiction and practice of the court have been so changed by statute as to depart in many respects very far from the original type.

Even in England, where equity jurisprudence accomplished its development, the ancient practice has decayed and given way to what are called reform methods. The presiding judge of the Chancery Division of the High Court of Judicature is hardly to be recognized as the successor of those princes of the law who reigned in the old days as Lord High Chancellors of England. Only in the courts of the United States can now be found a jurisdiction and practice in chancery as it existed in its purest and highest development. In these courts the ancient practice is preserved, excepting as it may have been modified by rules issued from time to time by the Supreme Court; and Congress has been wisely conservative in either limiting or extending the jurisdiction of these courts. It so happens, then, that he who would discuss the jurisdiction of courts of equity apart from statutory modification, must resort to the Federal tribunals as the single modern illustration of his subject.

That a difference should exist between law and equity is somewhat confusing to the lay mind, which does not readily perceive why the administration of justice should admit of such distinctions. It is commonly supposed that equity and justice are convertible terms, and that to this end all laws should be framed and their administration proceed. We who have been admitted to the mysteries of the inner temple understand that the word Equity is used in its technical sense as denoting a system of jurisprudence in contrast with that of the common law of England; and that the distinction bears no relation to abstract justice or to law as a science, but is wholly predicated upon different methods of enforcing rights and applying remedies.

The injustice of the law has been a favorite theme from time

immemorial. We have the warrant of Inspired Writing that the letter of the law killeth. The Jew of Venice appealed to that law which did not admit of the unstrained quality of mercy. The conception of equity was designed to relieve against the injustice of the law, which, being general in its nature, permitted of no exceptions in particular cases.

Aristotle defines equity as a better sort of justice which corrects legal justice when the law errs through being expressed in universal form. Accordingly the equitable man is he who does not push law to an extreme, but having legal justice on his side is disposed to make allowances.¹ The idea underlying the Roman system was that positive law was deficient not only by reason of the general form of its expression, but also in that it reflected the sense of right and wrong entertained by its creators, who themselves might not always be actuated by the purest motives or have the most intelligent conception of private justice. Resort was had to that natural law which reason appoints for all mankind, which was thought to be so flexible, yet so sure, that justice in all cases would be attained. These principles of natural law became formulated as rules in equity. Each prætor upon assuming office would adopt the edicts of his predecessors and promulgate the rules which should govern in his administration. Whenever the positive law conflicted with natural justice as thus expressed, preference was given to the equitable rule.

Equity thus came to represent any body of rules existing by the side of the established law, founded on distinct principles, and claiming incidentally to supersede that law in virtue of a superior sanctity inherent in those principles.²

At the time of the Norman conquest, and for many years thereafter, the common law of England consisted of a mass of customs, rules and precedents. It was not a scientific system elaborated by learned doctors, as the civil law of continental Europe claimed to be; it was the outgrowth of practical conditions among a rude but virile people, possessing to a remark-

¹ Ethics, bk. V, ch. 10.

² Maine's "Ancient Law."

able degree the instinct of law and order. Precedent rather than principle was its foundation, and a rigid conservatism marked its administration.

The irresistible tendency was toward a technical construction which failed to consider the broad principles upon which all laws should rest; and in consequence the lines of law and justice, which should run parallel, were steadily growing more divergent.

In the beginning appeals for relief were made directly to the King in the exercise of his prerogative. These became so frequent that they were referred as of course to the ecclesiastic who represented the King as the keeper of his conscience and the custodian of his seal. In this way there were created in the Hall of the King the semblance of a court which professed to exercise a jurisdiction ancillary or subordinate in its nature. The Chancellor in those early days was always a churchman who had been educated in the Roman law, and it was inevitable that the principles of that law should constitute the foundation of the new system. There thus grew up by the side of the common law a more refined system of jurisprudence which, while claiming to be ancillary, was really in a large degree antagonistic.

It was said that equity was the handmaiden of the law and would in no case assume jurisdiction if an adequate legal remedy existed; but the courts of equity reserved to themselves the right to determine the adequacy of the legal remedy, and unhesitatingly assumed that the common law by reason of its universality was deficient in recognizing peculiar rights and in applying appropriate remedies. The handmaiden persistently usurped the authority of the mistress. All of the pretensions of the Roman system were revived. Thus equity succeeded in seating itself in separate tribunals and in establishing an independent, though professedly limited, jurisdiction.

It is certain that its jurisdiction is no longer ancillary, if indeed it ever truly was. Law and equity are coordinate divisions of the great science of jurisprudence, both designed to accomplish the same end by different methods, just as in our sister science medicine and surgery go hand-in-hand in contributing

to physical well-being. An equitable cause of action is as inherently different from one that is legal as is a broken limb from a diseased lung. The one case demands the surgeon's skill; while the other may yield to gentler remedies. Some cases are so desperate that concurrent remedies may be necessary, and though each may minister to the other, it cannot be said in any true sense that either is dependent.

The original independent jurisdiction having become firmly established, it is not surprising that courts of equity should have manifested a persistent tendency toward an expansion of the limitations that hedged them in. The enjoyment of power, whether judicial or otherwise, inevitably results in the reaching out after greater power. The opportunity came to courts of equity. It was found that certain causes of action presented both legal and equitable features, so that parts of the controversy might come within the cognizance of either court. To thus divide a cause between separate tribunals, each independent within its own sphere, would complicate the administration of justice, harass the parties litigant, and possibly cause unseemly conflict. The evil was apparent; no remedy had been devised. No court of law had ever claimed the right to grant equitable relief, and so it was powerless to enforce the equitable rights of the parties.

Equity, with its more elastic methods, came to the rescue. It declared that equity loved to do complete justice, and not by halves; and that when it had once properly assumed jurisdiction of a cause for any purpose it would retain it for all purposes, even to the extent of administering purely legal remedies, to the end that the whole controversy might be fully and finally determined in one cause and in one court. This jurisdiction over legal subjects was claimed to be exercised in aid of that originally acquired over the equitable cause of action, and as ancillary thereto.

The courts of the United States, as to their jurisdiction and practice, were created upon the model of the English High Court of Chancery as it existed in 1789. They thus became vested

with the right to exercise ancillary jurisdiction within the limitations that had become defined. This ancillary jurisdiction was recognized (1) in those cases in which its exercise was necessary to the granting of full relief in causes over which the court had acquired original jurisdiction; and (2) in those that were supplementary to and a practical continuation of some original proceeding in that court. All such incidental and supplementary proceedings were ancillary in the chancery sense.

The English High Court of Chancery was not limited in its jurisdiction, with reference to the citizenship of the parties or the amount involved. It could, therefore, freely exercise its ancillary jurisdiction in all appropriate cases.

The courts of the United States, however, were confronted with novel and peculiar conditions, relative to the courts of the several States. The jurisdiction of the Federal courts was dependent upon the amount in controversy and the citizenship of the parties. It therefore happened that while the Federal court had original cognizance of the cause, some proceeding arising from or touching the cause would be between citizens of the same State, or would involve an amount insufficient to confer original jurisdiction on the Federal court. It became a serious question whether, in such cases, the Federal Court could take cognizance of the controversy. The courts of the several States were vested with superior general jurisdiction, while that of the Federal Courts, though superior, was limited. Both were courts exercising concurrent jurisdiction within the same territorial sphere, but owing allegiance to different sovereignties. The situation was unique, delicate and difficult. How each could maintain its own dignity and freely exercise its own jurisdiction without encroaching upon that of the other offered an untried problem which was thought by many to be not possible of solution. It was feared that the federal judiciary would prove the means of destroying the rights of the States; and that the sovereignty of the young Republic would, through the encroachment of its judicial power, eventually absorb the sovereignty that had been reserved to the component States.

To the wise conservatism of both the State and Federal judiciary is due the disappointment of this prophecy. The problem has been solved; and the present harmonious relations between these tribunals evidences a condition that safeguards the liberty of the citizen, and which must be highly satisfactory to all who love their country.

As an illustration of the gravity of the situation, let us consider a case where the Federal Court has caused property to be seized under its process; the property is claimed by a citizen of the same State as the adversary party, so that under the plain terms of the Judiciary Act the Federal Court is without original jurisdiction over the controversy. What was the remedy? No court could permit the possession of property to be taken from its officer under process issuing from a coordinate court of another sovereignty; to do so would be to yield its independent jurisdiction and confess that it could not control or enforce its own process. If, in such a case, the Federal Court is without jurisdiction, and yet will not permit the party to litigate the question in the State Court, it would seem that a failure of justice would be imminent, or a conflict between courts inevitable. A similar situation arises when a judgment at law, obtained in the Federal Court, is sought to be enjoined at the instance of one who does not possess the diversity of citizenship requisite to maintain an original bill in that court.

It is now perfectly plain that the Federal Court can grant relief in all such cases, upon the ground that such proceedings are merely ancillary to the original suit out of which they arose, and may be maintained without reference to the citizenship of the parties or the amount in controversy.

The judicial power of the courts of the United States is exercised not only in such cases as are ancillary in the chancery meaning of the term—that is, such as are in the nature of proceedings supplementary to the original suit out of which they arose—but also extends to that class of cases which are regarded as ancillary to the original suit, in that they are dependent upon it in the jurisdictional sense. In such cases it is not a question

whether the proceeding is supplemental and ancillary, or is independent and original in the sense of the rules of equity pleading; but whether it is supplemental and ancillary, or is to be considered entirely new and original in the sense which the Supreme Court has sanctioned with reference to the line which divides the jurisdiction of the Federal Courts from that of the State Courts.¹

The right to entertain such dependent proceedings is in the exercise of the inherent and equitable powers of the Court as incidental to its original jurisdiction.²

It is now well settled that this ancillary jurisdiction may be invoked when any order, proceeding, decree or judgment of the court is sought to be construed, restrained, enforced, vacated or modified,³ as well as in those cases affecting the possession and control of property, which in legal contemplation is in the custody of the court.⁴

It is further established that in cases involving the administra-

¹ *Minn. Co. v. St. Paul Co.*, 2 Wall. 632; 17 L. Ed. 895.

² *Krippendorf v. Hyde*, 110 U. S. 280; 28 L. Ed. 147.

³ *Pac. R. Co. v. Mo. Pac. R'y Co.*, 111 U. S. 522, 20 L. Ed. 504; *Johnson v. Christian*, 125 U. S. 646, 31 L. Ed. 821; *Carey v. Houston R'y Co.*, 161 U. S. 128, 40 L. Ed. 643; *Morgan's Co. v. Texas Cent. R'y Co.*, 137 U. S. 201, 34 L. Ed. 636; *Nashville v. Cooper*, 6 Wall. 253, 17 L. Ed. 853; *Riggs v. Johnson County*, 6 Wall. 196, 18 L. Ed. 776; *Covell v. Heyman*, 111 U. S. 179, 28 L. Ed. 891; *Cortes Co. v. Thannhauser*, 9 Fed. 227; *Thompson v. McReynolds*, 29 Fed. 658; *Maitland v. Gibson*, 79 Fed. 138; *McDonald v. Seligman*, 81 Fed. 757; *New York, &c. Co. v. Francis*, 83 Fed. 772; *Broadis v. Broadis*, 86 Fed. 954; *Foster v. Mansfield R. Co.*, 36 Fed. 628; *Farmers' Trust Co. v. Houston R. Co.*, 44 Fed. 116; *Central Trust Co. v. Wabash Co.*, 46 Fed. 159; *Central Trust Co. v. Carter*, 78 Fed. 233; *Toledo R'y Co. v. Trust Co.*, 95 Fed. 504; *Symmes v. Union Trust Co.*, 60 Fed. 853; *Bradshaw v. Miners Bank*, 81 Fed. 904; *Widaman v. Hubbard*, 88 Fed. 82; *Jenks v. Brewster*, 96 Fed. 625; *LaBette County v. United States*, 112 U. S. 217, 28 L. Ed. 698; *Pacific R. of Mo. v. Mo. Pac. R'y Co.*, 111 U. S. 545, 28 L. Ed. 498; *Claffin v. McDermott*, 12 Fed. 375; *Hill v. Kuhlman*, 87 Fed. 498; *Webb v. Barnwall*, 116 U. S. 197, 29 L. Ed. 596; *Board of Liquidation v. United States*, 108 Fed. 689.

⁴ *Freeman v. Howe*, 24 How. 450, 16 L. Ed. 749; *Riggs v. Johnson County*, 6 Wall. 196, 18 L. Ed. 776; *Watson v. Jones*, 13 Wall. 716, 20 L. Ed. 671; *Peoples' Bank v. Calhoun*, 102 U. S. 262, 26 L. Ed. 103; *Covell v. Heyman*, 111 U. S. 177, 28 L. Ed. 391; *Rio Grande R. Co. v. Vinet*, 132 U. S. 481, 33 L. Ed. 401; *Byers v. McAuly*, 149 U. S. 614, 37 L. Ed. 871; *Morgan v. Sturgis*, 154 U. S. 274, 38 L. Ed. 987; *Central National Bank v. Stevens*, 169 U. S. 461, 42 L. Ed. 817; *Tefft v. Sternberg*, 40 Fed. 4; *Jordan v. Taylor*, 98 Fed. 643; *Oliver v. Parlin & Orendorff Co.*, 105 Fed. 272; *Blake v. Pine Mountain I. & C. Co.*, 78 Fed. 634.

tion of the affairs of an insolvent estate, all proceedings within the general scope and purpose of the original bill, whether for the collection of assets or the protection of property rights, are to be regarded as ancillary to the main suit. Not only may any person intervene for the purpose of asserting his claims or of receiving a benefit, but entire strangers to the original litigation may be brought before the court in order that they may be required to respond to any duty or liability which is claimed against them. In all such dependent proceedings the jurisdiction is attributed to that upon which the original cause rests, and is exercised without reference to the amount involved or to the citizenship of the parties to the immediate controversy.¹

The first step taken by the court was a very feeble assertion of its jurisdiction. A bill in equity was filed in the United States Circuit Court to restrain a judgment at law obtained in that court. The bill was undoubtedly original, according to the English chancery practice, as construed by the Supreme Court. As an original bill it was defective for want of parties defendant, who were citizens of the same State as the plaintiff. Chief Justice Marshall doubted the propriety of making such persons parties, presumably upon the idea that it would oust the jurisdiction of the court. If the bill could not be entertained the plaintiff was remediless, unless the Federal Court would permit its judgment to be reviewed in the State Court. The court cautiously declined to consider the main question, but contented itself by declaring that the bill should not be treated as original; and sustained the

¹ *Pope v. Louisville N. A. & O. R. Co.*, 173 U. S. 577, 43 L. Ed. 814; *White v. Ewing*, 159 U. S. 86, 40 L. Ed. 68; *Bumbel v. Pitkin*, 113 U. S. 547, 28 L. Ed. 1129; also 124 U. S. 143, 31 L. Ed. 378; *Davis v. Gray*, 16 Wall. 219, 21 L. Ed. 453; *Porter v. Sabin*, 149 U. S. 473, 37 L. Ed. 815; *Rouse v. Letcher*, 159 U. S. 47, 39 L. Ed. 341; *Gregory v. Vann Ee.*, 160 U. S. 643, 40 L. Ed. 566; *Carey v. Houston & T. C. R. Co.*, 161 U. S. 115, 40 L. Ed. 688; *Compton v. Jesup* 167 U. S. 1, 42 L. Ed. 55; *Lanning v. Osborne*, 79 Fed. 657; *Peoples' Savings Institution v. Miles*, 76 Fed. 252; *Carey v. Houston R'y Co.*, 52 Fed. 674; *Fish v. Ogdenberg R. Co.*, 69 Fed. 132; *Ex parte Tyler*, 149 U. S. 164, 37 L. Ed. 689; *Peck v. Elliott*, 79 Fed. 10; *Ross, &c., Foundry Co. v. Southern, &c., Iron Co.*, 72 Fed. 959; *Bausman v. Denny*, 73 Fed. 70; *Washington v. Northern Pac. R. Co.*, 75 Fed. 334; *Bowman v. Harris*, 95 Fed. 918; *Sullivan v. Barnard*, 81 Fed. 887; *Thompson v. Poole*, 70 Fed. 727; *Miles v. New South B. & L. Ass'n*, 95 Fed. 921; *Kuhn v. Morrison*, 75 Fed. 81; *Rice v. Durham Water Co.*, 91 Fed. 433; *Connor v. Alligator Lumber Co.*, 98 Fed. 155.

jurisdiction upon the ground that in such a case the court could dispense with parties who would otherwise be required, and decree as between those before the court.¹

Another similar case came before the court, in which all of the parties were citizens of the same State. One of the defendants was the trustee under the will of the original plaintiff in an action at law. As to this defendant the jurisdiction was maintained upon the theory that he was the representative of one of the original parties to the action at law, between whom the bill should be regarded as ancillary. The court was still very guarded, and declared that if other parties were made and different interests were involved, the bill must be considered to that extent at least original, and the jurisdiction of the court must depend upon the citizenship of the parties.²

This qualification, if adhered to, would have defeated the purposes for which the ancillary powers of courts of equity have been exerted. It is easy to see that if third parties were really affected by a judgment or decree of the court and the Federal Court refused to grant them appropriate relief, either the rights of these parties could not be adjudicated at all, or the Federal Court would have been forced to permit its judgments to be reviewed in the courts of another sovereignty. To refuse full relief in a cause over which it had rightfully acquired original jurisdiction, would have been in violation of one of the fundamental principles of equity jurisprudence; to allow its judgments to be reviewed by a coordinate court of another sovereignty could not be tolerated. Indeed, it is hard to understand how a bill could be original in the jurisdictional sense as to some of the parties and ancillary as to others; it would seem that the court must either entertain the whole controversy, as ancillary to the original proceeding, or the bill should be treated as original, and therefore dependent for jurisdiction upon the statutory requirements. There could be no middle course.

This was perceived and corrected by the court at the first op-

¹ *Simms v. Guthrie*, 9 Cranch 19; 3 U. S. Ed. 642.

² *Dunn v. Clarke*, 8 Pet. 1; 8 U. S. Ed. 845.

portunity, and thereafter jurisdiction was refused in cases considered original,¹ or the proceeding was regarded as ancillary and cognizance was taken of the entire controversy.

When the question was directly presented to the Supreme Court, it met the issue fairly and frankly. Certain property had been seized under process of attachment issuing in an action at law pending in the United States Circuit Court. The property was taken from the possession of the marshal by the sheriff of the county, acting under process issuing from the State Court. The party at whose instance the property was seized by the sheriff considered himself remediless in the Federal Court, in that the requisite diversity of citizenship was lacking between himself and the adverse claimant. The case proceeded in the State Court, where it was insisted that the Federal Court was without jurisdiction, that its process was illegal and void, and that the State Court alone was competent to afford adequate redress.

Upon writ of error to the Supreme Court of the United States, Mr. Justice Nelson declared that it belonged exclusively to the Federal Courts to determine the question of their own jurisdiction and the validity of their process; and that it need scarcely be remarked that no government could maintain the administration and execution of its laws if the jurisdiction of its judicial tribunals was subject to the determination of another. The right of the Federal Court to decide every question arising in a cause over which it had first acquired original jurisdiction was fully maintained; and it was in express terms declared that a bill filed on the equity side of the court to restrain or regulate judgments or suits at law in the same court, and thereby prevent injustice or an inequitable advantage under mesne or final process, is not an original suit, but is ancillary merely, "and is maintained without reference to the citizenship or residence of the parties."²

Referring to the earlier expression of the court that its power was limited to a case between the original parties to the action at

¹ *Freeman v. Howe*, 24 How. 450; 16 L. Ed. 749.

² *Christmas v. Russell*, 14 Wall. 81; 20 L. Ed. 763.

law, it was said that such a declaration was probably not intended, "as any party may file the bill whose interests are affected by the suit at law." It has sometimes been said or intimated that this statement on the part of the court was *obiter dictum*, and not to be treated as the law of the case; but the Supreme Court, on great consideration, has finally declared that it was in point of fact a substantial part of the argument in support of the judgment, and the court felt bound to confirm it in substance as logically necessary.¹

The reason underlying the decision is so convincing, and the acceptance of the doctrine so necessary to an orderly administration as between courts of concurrent jurisdiction, that the doctrine has found practically universal acceptance.

That property seized under the process of one court cannot be reached by the process of another court of merely concurrent jurisdiction, and that the court first acquiring jurisdiction acquires the right to decide every question arising in the cause, were doctrines which were adopted from the English courts of chancery. The novel questions involved concerned the jurisdiction of the court relative to that of the State Court. It is perfectly plain that no court could preserve its dignity and maintain its authority if its process was subject to review by coordinate courts of another sovereignty; and a strong assertion of the right of the Federal Court to regulate and control its own process, judgments, orders and decrees, without regard to the citizenship of the parties, followed as logically necessary in order that the parties might not be left remediless or be subjected to the abuse of process.

This case and those which followed and applied the principle, defined the general sphere within which the ancillary power of the court would be indulged. While it was clear that all persons claiming an interest in property in the possession of the court, or in the benefits of an estate which was being administered in chancery, might intervene for the purpose of asserting such in-

¹ Krippendorff v. Hyde, 110 U. S. 276; 28 L. Ed. 145.

terest or receiving such benefit, it remained to be decided whether the court could, by compulsory process, bring in third parties who are entire strangers to the original litigation in order to enforce liabilities which it is claimed they owe to the estate. Neither had it been adjudicated whether the court would take cognizance of an ancillary proceeding against strangers to the litigation where the amount claimed was less than that necessary to confer original jurisdiction. These two important questions came before the court in the same case.

The receiver of an insolvent land company instituted one suit in the Federal Court of his appointment against a great number of persons who were claimed to be indebted to the corporation for lands purchased under separate and distinct contracts.

The indebtedness claimed against many of the parties was less than the requisite jurisdictional amount. The Supreme Court held that any suit, by or against the Receiver, in the course of the winding up of the affairs of an insolvent corporation, whether for the collection of its assets or for the defense of its property rights, must be regarded as ancillary to the main suit and as cognizable in the Circuit Court, regardless either of the citizenship of the parties or the amount in controversy. The right of the Receiver to bring in these third parties was sustained; but the court expressly refused to decide whether all could be made parties defendant to one suit, as had been done by the Receiver.¹

This decision proceeded upon the proposition that when a court exercising jurisdiction in equity appoints a Receiver for all the property of the corporation, the court assumes the administration of the estate; the possession of the Receiver is the possession of the court, and the court itself holds and administers the estate, through the Receiver as its officer, for those whom the court shall ultimately adjudge to be entitled to it.²

The Receiver takes title by operation of law and as an instru-

¹ *White v. Ewing*, 159 U. S. 36; 40 L. Ed. 67; *Lanning v. Osborne*, 69 Fed. 657; *Peck v. Elliott*, 79 Fed. 10; *Miles v. New South B. & L. Ass'n*, 95 Fed. 921.

² *Porter v. Sabin*, 149 U. S. 473; 27 L. Ed. 815.

ment of the court which appoints him; and if he appears as a party to the suit, it is only because he represents the court in its inherent power to wind up the estate of an insolvent corporation over which it has, by original bill, obtained jurisdiction.

I have thus briefly outlined the nature and extent of the ancillary jurisdiction exercised by Federal Courts of Equity. Many cases might be referred to as showing the application of the principles involved, some of which will be found cited in the footnotes for the benefit of those who care to make a more particular investigation.¹

There is a well-defined distinction between the ancillary and the auxiliary jurisdiction of courts of equity, though the difference seems frequently to have been disregarded. That which is ancillary implies that it is subordinate and dependent, while that which is auxiliary refers to the extending of aid which is entirely

¹ Cross-bill growing out of subject of original suit is regarded as ancillary. *Milwaukee R. Co. v. Chamberlain*, 6 Wall. 750, 18 L. Ed. 861; *Averett v. Independent School District*, 102 Fed. 529; *Brooks v. Laurent*, 93 Fed. 647; *First National Bank v. Salem Company*, 31 Fed. 583; *Osborne & Co. v. Barge*, 30 Fed. 806; *Jesup v. Ill. R. Co.*, 43 Fed. 496.

Assignee of plaintiff may file supplemental bill to quiet title as ancillary to original pleading. *Glover v. Shepperd*, 21 Fed. 484.

Third party may intervene without regard to citizenship. *Lamb v. Ewing*, 54 Fed. 273; *Park v. New York R. Co.*, 70 Fed. 643; *Conwell v. Valley Canal Co.*, 4 Biss. 200.

Substituted plaintiff may file original bill in the nature of a supplemental bill. *Ross v. Ft. Wayne*, 63 Fed. 471.

Bill to foreclose upon property in the hands of Receiver is ancillary. *Compton v. Jesup*, 68 Fed. 279.

Where suit is pending for appointment of Receiver, court has jurisdiction of bill filed by lien claimants, whose right to foreclose in the State Court will be defeated when the Federal Court takes possession. *Central Trust Co. v. Bridges*, 57 Fed. 762.

As to service of process in ancillary proceedings, see *Gregory v. Pike*, 79 Fed. 521; *Smith v. Woolfolk*, 115 U. S. 143, 29 L. Ed. 357; *Abraham v. North German Fire Insurance Co.*, 37 Fed. 732.

A court entertaining ancillary bill may protect its exclusive jurisdiction by injunction without offending section 720 of the Revised Statutes. *Harkrader v. Wadley*, 172 U. S. 148, 43 L. Ed. 399; *Oliver v. Parlin & Orendorff Co.*, 105 Fed. 272.

Bill attacking assignment for creditors in aid of an attachment at law is ancillary. *Dewey v. West Fairmont Co.*, 123 U. S. 333, 31 L. Ed. 181.

Bill of plaintiff's assignee to compel conveyance ordered under original proceedings is ancillary. *Root v. Woolworth*, 150 U. S. 413, 37 L. Ed. 1126.

Bill for reformation of insurance policy upon which suit is pending at law is ancillary. *Rosenbaum v. Council Bluff Insurance Co.*, 37 Fed. 725.

independent in its nature. When reference is had to the subject of a suit, the jurisdiction of equity is either original or ancillary; with relation to other courts, the jurisdiction is either exclusive, concurrent or auxiliary. An ancillary proceeding grows out of and is always dependent upon some original proceeding in the same court. When the aid of a court is sought in order to carry out the purposes contemplated in an original bill pending in another court, the secondary jurisdiction so exercised is not dependent or ancillary, but is independent and auxiliary. It has been denied that one Circuit Court of the United States would exercise jurisdiction as purely ancillary to that of another Circuit Court.¹ A bill invoking the aid of a court other than that in which the original proceeding is pending, must have all of the averments and prayers necessary in an original bill and must be addressed to the auxiliary jurisdiction of the court. While the bill in such case may be in some sense ancillary, the jurisdiction exercised is independent.² An ancillary bill is applicable only to a proceeding growing out of original proceedings in the same court, upon which it depends, and is instituted for the purpose of rendering complete justice as between all the parties in interest in that cause.

A bill filed to assist another circuit court in the administration and distribution of assets is really addressed to the independent power of the court and is auxiliary.³ A receivership in one court, however, may be said to be ancillary to that in another court.⁴ This auxiliary jurisdiction is freely exercised by the courts of the United States because of the comity existing between them.

The close political and commercial relations of the people in the various States have brought about business conditions requiring frequent invocation of the auxiliary jurisdiction of the Federal Courts. When an insolvent corporation is engaged in business and has assets situated in other States, it becomes of the

¹ *Mercantile Trust Co. v. Kanawha & O. R. Co.*, 39 Fed. 337.

² *New York & C. R. Co. v. New York & C. R. Co.*, 58 Fed. 268.

³ *Coltrane v. Templeton*, 106 Fed. 370.

⁴ *Platt v. Philadelphia R. Co.*, 54 Fed. 569.

highest importance that its affairs should be administered in one homogeneous and concentrated management, and that one court should determine the general rights of the parties at interest and control the distribution of the funds. The original bill is filed in the court of the domicile of the corporation, and similar bills are filed in the courts of each district in the several States in which are situated assets to be administered. The court first assuming jurisdiction over the person of the defendant corporation and appointing a receiver is the court of primary jurisdiction, while the other courts which lend their aid to the administration exercise auxiliary jurisdiction.

Under the Federal procedure, the Receiver appointed in the primary court is, by this system of auxiliary proceedings, usually appointed Receiver in the several circuits in which the property is situated. The administration of the assets is thus centralized. The ancillary is but part of the home receivership. There is but one administration, one distribution. Each person whose interests may be involved, whether he lives in one State or another, will receive his exact proportionate benefit as if all were citizens of the same. For the purposes of the suit there is but one jurisdiction, one administration, one distribution and one incidental expenditure. It is obvious that no quicker, cheaper or more equitable administration could be had.¹ The relations of the courts are governed by the rules of comity. In order to insure equality among all parties at interest, it is evident that some one court must determine their rights, although the assets may be scattered through many jurisdictions. The court of primary jurisdiction is selected for this purpose, not because of any paramount inherent right, other than that of having jurisdiction over the person of the defendant and of being first in time.²

The domiciliary court first entertaining the bill making the appointment of the receiver has jurisdiction of all matters affecting the general administration. The auxiliary courts confine themselves to the getting in of the assets within their respective

¹ *Towle v. American B. L. & I. Soc.*, 60 Fed. 131; *High on Receivers*, 3d Ed., p. 340.

² *Shinny v. North American S. L. & B. Co.*, 97 Fed. 9.

territorial jurisdictions and of protecting and enforcing the rights of the receiver of the defendant corporation therein. Should any purely local claim be presented, the auxiliary court will exercise its independent judgment with reference thereto. The taking of all accounts, the general references to Masters, the control of the receiver and the distribution of all funds belonging to the estate are remitted through comity exclusively to the primary court. It is manifest that any other rule would result in great confusion and unnecessary expense.¹

Where a bill for the winding up of the affairs and the distribution of the assets of an insolvent corporation is pending, all subsequent proceedings filed in that court, in any way relating to that cause, are in the true sense ancillary and dependent. Thus all interventions filed for the purpose of asserting any interest at the instance of any party, or of receiving any benefit, as well as all proceedings for the purpose of protecting the property rights or of enforcing obligations due to the estate, are strictly ancillary. Ancillary proceedings may be appropriately instituted in courts exercising only auxiliary jurisdiction. The subsequent proceedings in the auxiliary court depend upon and are ancillary to the bill pending therein, rather than upon that in the court of primary jurisdiction.

But for the fact that this paper has already grown to a forbidding length, it might be of interest to further pursue this investigation and point out the practice by means of which this auxiliary power can be most appropriately invoked and enforced. The subject is one that cannot be exhausted on an occasion like this, and hence I must forbear to further tax your patience.

¹ *Central Trust Co. v. E. T. V. & G. R. Co.*, 30 Fed. 895; *Miles v. New South B. & L. Ass'n*, 95 Fed. 919; also 99 Fed. 4; *New York P. & O. R. Co. v. New York L. E. & W. R. Co.*, 58 Fed. 268; *McMurray v. Gosney*, 106 Fed. 11.

For other authorities bearing upon the question of the relations between courts exercising primary and auxiliary jurisdiction, see *Wheeling Bridge Co. v. Cochran*, 86 Fed. 500; *Clyde v. R. & D. R. Co.*, 56 Fed. 534; *Ames v. Un. Pac. R. Co.*, 60 Fed. 967-974; *Smith v. Taggart*, 87 Fed. 95; *Failey v. Tailbee*, 55 Fed. 892; *Parsons v. Charter Oak Ins. Co.*, 31 Fed. 305; *Ware v. Supreme Sitting*, 28 Atl. Rep. 1041; *Platt v. Philadelphia R. Co.*, 54 Fed. 569; *Baldwin v. Hosmer*, 59 N. W. 432, 25 L. R. A. 743; *Burwell v. Supreme Sitting*, 36 N. E. 1065; *Jennings v. Phila. & R. R'y Co.*, 23 Fed. 569.

APPENDIX H.

THE BIBLE IN THE LAWYER'S LIBRARY.

PAPER BY JOS. HANSELL MERRILL, OF THOMASVILLE.

Perhaps it is but professional egotism, but I have a deep conviction that of all people there is greatest need for a lawyer to have a broad education, to know something, yes much, of everything else, as well as everything of the law.

Since Ingersoll's sophomoric declamations of other men's doubts and blasphemies, and the effusions of the "higher critics," it has become quite the fashion to study the Bible. The deliverances of these worthies set people to wondering what was the truth, and to get about finding out for themselves, so that now more than ever before, we find the schools and colleges and learned societies devoting time and labor and money towards finding out what is in the Bible, and what are the evidences of its authenticity.

I had presented to me several years ago five ponderous volumes bound in law sheep, Matthew Henry's Commentaries, inscribed on the inside cover of one of which was, "That my brother may be conversant with the laws of the Kingdom of God, as well as those of the commonwealth of Georgia." The result is that being myself a straggler along after this throng of Bible students, and having seen some of the treasures in this storehouse for lawyers, and being mindful of the injunction in the closing lines of the book, "And let him that heareth say come," I thought that it would not be amiss to undertake to entertain you with some citations of special interest to lawyers in this book, which has been aptly said to be "A book for all ages, and for all nations, for all classes of men and all states of

society, for all capacities of the intellect and all necessities of the soul. It is so conservative as to make it a duty to revere the past; so progressive as to be in advance of the most enlightened age." (Danl. March.)

So, if I am telling you what is already too familiar to be entertaining, pardon me on the score of the enthusiasm common to recent converts.

THE LAW.

In it we read (Neh. 8:7) of the first law school of which we have any knowledge, that opened by Nehemiah, in which, with the help of a large faculty, he "caused the people to understand the law," the law given by Moses.

We study the old Grecian law, the Civil law, the Code of Napoleon, the English Common Law; why not the Mosaic? For pure water, which is the emblem of truth, we trace the stream to the fountain head. If there be a human fountain head for law surely that is Moses. If the measure be antiquity, or wisdom, or the number who obey, or the length of time influenced, Moses stands preeminently above all others, even leaving out of consideration all question of his divine inspiration. Judging by my own experience it will be a surprise to note to what an extent the Mosaic Law is the foundation of our own. I was first led to study this by a reference from Williams on Executors to Num. 27:8-11, the Mosaic law on the subject of descent, in a case I had where there was no wife or children or brothers or sisters. I have since had occasion often to consult it, to compare our laws with that, and at times found considerable help.

We find in the twentieth chapter of Exodus, the first giving of the Ten Commandments, the foundation of all the law, of which all else is but an elaboration, since the germ of it all is contained in them. To them we trace all the acts which we call *malum in se*. By the light of them we determine what is right and what is wrong, which is the objective point in all our reasoning. They are the Constitution, and all laws that cannot stand the test of their requirements should be abrogated.

Note the preamble to this in Exodus 20:2, "I am the Lord thy God which have brought thee out of the land of Egypt, out of the house of bondage." We read between the lines the assertion of the right to give the law, and the assurance also that it is given with a desire for the welfare of those to whom it is given. Is the more elaborate preamble to the Constitution of the United States or that to the Constitution of Georgia any more comprehensive?

Georgia's greatest Chief Justice, our beloved Bleckley, said to me some years ago at his summer home at Clarkesville, that it was necessary for a man to get "the spirit of the law if he would ever be a great lawyer, just as a musician must have rhythm in his soul." At every turn of a lawyer's life, every day, he is trying to follow the guidance of that which commands what is right, and prohibits what is wrong. In what book, what set of books, what library of the world is there such authoritative, such comprehensive, such comprehensible treatise on rights and wrongs as in the Bible? Whence otherwheres does the spirit of the law shine so brightly or bestow itself so abundantly? Is it not then just here that we may catch this spirit, get its inspiration and its guidance, lay the first broad foundation for the making of a lawyer?

Let us see what are some of these laws on subjects with which we are dealing every day. In the twenty-first chapter of Exodus, immediately following the decalogue, after disposing of the question of slavery, with which we are done, we come in the twelfth verse to the subject of homicides. For a deliberate killing the penalty is, "he shall surely be put to death." While "if God deliver him unto his hand" (a peculiar way of stating an accidental killing), a city of refuge is provided. This is not the first time the death penalty is ordered. We find the same law given to Noah (Gen. 9:6), "whoso sheddeth man's blood, by man shall his blood be shed." It is interesting to note that along with this law to Noah was also given authority to eat the animals, which required the taking of life, while Adam was allowed to eat only of the plants. After the fall the war is on, and

the command, or at least the permission, is to "kill and eat." The experiment of imposing less than the death penalty for murder in Cain's case had proven a failure. The murderer must himself be slain that his kind be exterminated.

The next subject treated is kidnapping, one of very lively interest to us for the past year. The law is, "he that stealeth a man and selleth him, or if he be found in his hand, he shall be surely put to death." When we read of the agony of parents suffering from this crime, we feel that the Mosaic penalty is more appropriate than our four to seven years in the penitentiary.

For a battery (18, 19), the offender shall pay for the lost time of the victim and have him "thoroughly healed."

"If a man smite his servant (20, 21) and he die under his hand, he shall be punished; but if he continue a day or two, he shall not be punished, for he is his money." In other words, the loss of the servant, his money, shall be punishment enough. But this was a part of slavery.

If a woman with child be hurt (22), so that the expected offspring be killed, the punishment shall be "as the husband will lay upon him," but the damages shall be assessed by the judges. "And if any mischief follows, thou shalt give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe." There's *lex talionis* for you.

"If an ox gore a man to death (28), stone the ox; his flesh shall not be eaten, but the master shall be quit." They let him off with the loss of the ox, and of the beef. "But if the ox is wont to push with the horn, and the owner is notified, but hath not kept him in, and he has killed a man before, the ox shall be stoned and the owner put to death," but an unlimited fine may be imposed as a ransom for his life.

If a man open a pit (33) and an ox or an ass fall in, he shall pay for the beast. The men seem to have had too much sense to fall in as they do nowadays, and there was no provision for them; or was it because there were no rich corporations then to be sued for damages?

If one ox kill another (35), divide the dead, sell the live one and divide the money. There is absolute equity surely, a judgment exquisitely molded to suit the case. But if one of the oxen had a bad record, his owner bears all the burden.

Penalty for larceny (22:1) is to restore four or fivefold. It is interesting to note that nearly all these laws were framed on the basis that the criminal has property, which would seem to indicate that there were no paupers in Israel in Moses's time. How much did the partial restoration of property every seven years have to do with this? To what extent could some such system be adopted by us?

"If a thief be found breaking up (22:2), and be smitten that he die, no blood shall be shed for him;" "if he have nothing, he shall be sold for his theft." I take it this is burglary in the night-time, and we have almost exactly the same law as this justifying the killing of the burglar if caught in the act, and imposing servitude if apprehended.

One putting stock into another's field is required to pay damages (25:5), or putting out fire in the woods, makes one liable for all the damage done. Our Supreme Court certainly gave this a broad interpretation when they held a railway company liable for the burning of a house two miles from the track.

In the matter of bailments (25:7), if the goods be stolen, double restitution shall be made. This was good authority for our similar provision in the double penalty for selling mortgaged property, but slavery and imprisonment for debt having been abolished, it was dropped out as unconstitutional. Double damages also for trespass of cattle.

So also a rule for return of hired things and of borrowed goods.

In case of seduction (25:16), marriage is required unless the father of the woman refuse to allow it, when the man "shall pay her according to the dowry of virgins." In either event she shall be treated as a virgin.

Then comes, in verse eighteen, one of the puzzles we can never hope in this life to understand: "Thou shalt not suffer

a witch to live." But then if our Pilgrim Fathers did not exterminate the race, they wrought such change in the business that we cannot now bring ourselves to enforce the law; for the witches of to-day are the young and pretty women, instead of the old and ugly. I base this statement on the fact that a young woman, on being called a witch, smiles, delighted with the compliment, while an old one indignantly denies the charge. It seems they leave off the witchery as they grow old.

Bastardy is punished with death (25:19).

"Thou shalt neither vex a stranger (25:21), nor oppress him." Then comes the command, "Thou shalt not afflict any widow or fatherless child," and the penalty of death is to be visited upon the head of the offender, with the avowed purpose of making his wife a widow and his children fatherless.

The Lord seems to have found this law grievously violated in his time on earth from his invective against the scribes and Pharisees (Matt. 23:14), "Woe unto you hypocrites! for ye devour widows' houses, and for a pretense make long prayers."

"Thou shalt not be to the poor as a usurer" (22:25).

The idea is not to charge a neighbor, an Israelite, interest ("mine suffering beebles," as Jacob of to-day expresses it) for money loaned him for his needs. I do not find anywhere any justification for the idea that interest is not to be charged where money is loaned for use in business, as to-day.

"If thou take thy neighbor's raiment (22:26) to pledge, thou shalt deliver it unto him by that the sun goeth down." This sounds as though it were aimed at breaking up or preventing the pawnbroker's business.

Perjury is prohibited (23:1).

"Thou shalt not follow a multitude to do evil" (23:2). This looks as if mobs, if not unknown, were certainly not unexpected in Moses's time. Lynching, though, seems not to have been so popular a pastime as now.

"Neither shalt thou countenance a poor man in his cause" (23:3). Our corporation counsel might invoke this for the edification of jurors who are inclined to "countenance the poor man" seeking damages.

Law of estrays (23:4), requiring that they be returned to the owner, which is a more neighborly demand than our law makes.

Take no gift (23:8), "for the gift blindeth the wise and perverteth the mouth of the righteous." Is this a little matter which was written for the benefit of public officials, which they forget when they "accept valuable courtesies" from the rich and powerful?

"And thou shalt not oppress the stranger" (23:9). There is a fellow in Kentucky who thinks this needs to be rubbed into the courts of my county. I defended him in a suit brought against him there, using his interrogatories, and when I reported the loss of the case and asked if I should appeal it, he wrote, "No, it's no use; I don't vote down there and the other fellow does."

It is interesting to note that the seventh year is designated (23:10) as a time for rest of man and for lands just as the seventh day is. I know a good many who seem to read this command to rest the "seven" instead of the "seventh," or perhaps uncertain which is the seventh, and, for fear of violating the command, rest all the time. For fear of bad results to others, inciting them to vagrancy, by calling attention to this, we will pass over this clause as quietly and quickly as possible.

In Lev. 13:38-50, we find the separation of the leper and the destruction of his clothes furnishing us authority for our quarantine and pest-house regulations.

"When ye reap the harvest (Lev. 19:9) ye shall not wholly reap the corners, nor gather the gleanings. Thou shalt leave them for the poor and for the stranger." Our wisest philanthropists have learned from this that the best way to help the poor is to give them something to do. Let them earn the bread they eat.

"The wages of him that is hired (Lev. 19:13) shall not abide with thee all night until the morning." We have followed this well in our prompt and vigorous manner of enforcing the claim of the laborer for his wages.

"Thou shalt not go up and down as a tale-bearer" (19:16). I

doubt from this whether Moses would have allowed the truth of the charge to be given as justification for slander; and I seriously doubt the wisdom of it in our law. It would be better if we positively discouraged the propagation of tale-bearers.

Lev. 19:35: "Ye shall do no unrighteousness in judgment, in meteyard, in weight or in measure. Just balances, just weights, a just ephah, and a just hin, shall ye have." Turning to Proverbs 11:1, we read, "A false balance is an abomination unto the Lord, but a just weight is his delight"; and turning to Gen. 23:15, we find the kind of currency used in the first financial transaction recorded, where Abraham bought a burial ground, that he "weighed to Ephron the silver 400 shekels." Do we not find here guidance for National honor in monetary standards that should silence all fiatists (whole or half) for all time? I trust this digression to politics is pardonable since nearly all lawyers are more or less politicians.

As you are supposed to live by what you think and say rather than what you eat, I have omitted the Mosaic laws as to eating, but in view of the impending barbecue, feel it proper to suggest the propriety of observing his rule as to pork in hot weather.

On the subject of marriage we find the prohibited degrees of relationship set out in Lev. 18:6-17; the stepmother, the sister or half-sister, the grandchild, the aunt or uncle, by blood or marriage, the daughter-in-law, the brother's wife, the daughter of a wife.

The law of inheritance is given in Num. 27:8-11. "If a man die and have no son, ye shall cause his inheritance to pass to his daughter; if he have no daughter, then to his brethren; if he have no brethren, then to his father's brethren; if his father have no brethren, then to his kinsman that is next to him of his family."

And what are these laws to us? Go one step further and admit their divine inspiration. "On the two tables of stone hang all the law and the prophets." Proclaimed from the summit of Mt. Sinai, in the earliest authentic history of man, they have been, and are to-day, a light to the world, showing the path of right, of justice, of peace, of happiness.

Let us see what is said of the law by some of those who lived under it. Turning to the nineteenth Psalm we find David, who not only lived under it, but executed it, saying, "The law of the Lord is perfect"—a fullness, completeness, covering every phase of life. "The statutes of the Lord are right"—no errors in them, no injustice. "The judgments of the Lord are true and righteous altogether"—no need of or desire for writ of error from them, so clearly just that the one against whom judgment is given is satisfied with its correctness.

Hear him again in the 119th Psalm (142), "Thy law is the truth." In Psalm 1, he pronounces the man blessed "Whose delight is in the law of the Lord," and in Psalm 37:31, "The law of his God is on his heart, and none of his steps shall slide." Poor David! Thoroughly did he learn the need of keeping this law in his heart, to keep his steps from sliding, and too, that greatest, chiefest characteristic of this law, that punishment inevitably follows its violation. That what a man sows that shall he also reap, and that too, manifold. You can see I have read more carefully than had the Irishman who explained to his friends, "This David was a bad man, yes, a bad man was David. The rascal stole a man's wife, and then had the poor fellow killed, and got off, he did, with pleading guilty to the stealing of a ewe lamb, by bribing the judge of the land, one Nathan, a Jew."

In the Bible we have that law that is inexorable, that must be, always is, and always will be obeyed. Given its violation the penalty never fails to follow. Glorify God if we will by obeying and experiencing his mercies. If not in this way, then we shall glorify him by vindicating his justice.

Let us hear from the sage, Solomon, in Prov. 6:23, "For the commandment is a lamp and the law light"; again Prov. 13:14, "The law of the wise is a fountain of life to depart from the snares of death"; and he warns others, Prov. 7:2, "Keep my law as the apple of thine eye; Prov. 28:9, "He that turneth away his ear from hearing the law, even his prayer shall be an abomination," which last sentiment will be heartily sanctioned by our judges. If the petition be not based on the law, they lend but a deaf ear to the prayer.

Again hear him as he lays the foundation of our homestead law (Prov. 22:27), "If thou hast nothing to pay why should he take away thy bed from under thee?"

Hear the great prophet Isaiah (8:19), as he tells us how to deal with the various cranks of his day, and ours, for they seem to be identical. "And when they say unto you, seek unto them that have familiar spirits and unto wizards that chirp and mutter; should not a people seek unto their God, for the living to the dead?" Was it with prophetic eye he saw us struggling with Christian Scientists, spiritualists *et id omne genus*, that he said this and added, "To the law and to the testimony; if they speak not according to this word it is because there is no light in them." The writings of this great man abound in the finest satire and keenest irony.

This law is the light for guidance, the standard for measurement. Let us bring all the new fads to this standard. Try them by its light, apply its tests, weigh them in its balance, and then stand by the result of the investigation.

It is amazing to contemplate the infliction of the death penalty for scores of trivial offenses in the laws of Europe and Great Britain during what is called the Dark Ages, until we see the cause. The light from Mt. Sinai had not penetrated the gloom that surrounded them. The exposition of that law by Moses was unknown to them; and the higher plane, the broader equity, which characterize the laws of to-day, are due to the light from this source. The higher a nation's civilization and enlightenment, the closer do its laws approximate this standard.

Again hear Isaiah (42:21) say, "He will magnify the law and make it honorable." It is certainly a commendable ambition for each of us to strive to be one of the instruments used to bring this about—"to make it honorable."

Before leaving this branch of the subject I must refer again to that law, written all through the book, as old Solomon Gaskins used to say his text was, "from kiver to kiver." It is that whatsoever a man soweth, that shall he also reap." It is expressed by every conceivable combination of words, and variety of illus-

tration, by precept and by example; the last most notably in the lives of David and Paul. David's deepest penitence nor Paul's sublimest service could free them from the penalty of reaping the crop they had sown. David violated one wife and his own son violated ten of his "in the sight of all Israel."

Paul imprisoned some and consented to the death of one, and, he says (2 Cor. 11:24), recounting the harvest he had reaped: "Five times received I forty stripes save one, thrice was I beaten with rods, once was I stoned, thrice I suffered shipwreck, in perils of waters, in perils of robbers; made to fight with wild beasts at Ephesus." What an abundant harvest did he reap! and from so small a planting! But we have seen the like ever since, and we see it about us every day. "What a man sows that shall he also reap," for the flesh, for the mind, for the body, for the spirit, and for time and eternity.

LAWYERS.

Turning from what this book says of the law, we find some comments on lawyers. We find in Luke (11:46), the Lord saying, "Woe unto you also, lawyers: for ye lade man with burdens grievous to be borne, and ye yourselves touch not the burden with one of your fingers."

It was a presumptuous lawyer (Luke 11:25) who, trying to entrap Jesus, asking, "What shall I do to inherit eternal life?" drew forth the parable of the good Samaritan. It is pleasant to see that he knew the law that Jesus asked him (may this generation of them be equally well-informed), and it was to his inquiry that we owe the broad view we have of the brotherhood of man.

ORATORY.

To the student of oratory, and I take it we are all such, the Bible is of great value. It abounds in the most apt illustrations, most striking, dramatic scenes; from it can be made the most effective quotations, because, as the people sang, "Saul has slain his thousands, but David his tens of thousands," so in a lawyer's regulation audience of twelve, or the politicians "vast con-

course," where one has read Shakespeare, ten have read the Bible, are familiar with it, and instantly grasp your idea. It is remarkable to note how many of the "World's Best Orations" (Brewer) have the words, phrases, ideas of the Bible in their climaxes.

One of the most effective speeches I ever heard in our courthouse was made by one of our bar defending a farmer in a suit by a horse dealer, the plea being breach of warranty, and it consisted of almost nothing but the peroration.

"Gentlemen, you have all read in your Bibles how a certain man went from Jerusalem down to Jericho and fell among thieves. Well, this defendant left his farm up here in the country, and came down to Thomasville and fell among—horse-traders."

As a graceful and effective speaker the Apostle Paul never had a human superior. Note the delicate compliment with which he begins his defence before Agrippa. "I think myself happy, king Agrippa, because I shall answer for myself this day before thee, especially because I know thee to be expert in all questions and customs which are among the Jews."

Hear him at Athens, a city full of statues to gods and goddesses: "Ye men of Athens, I perceive that in all things ye are very religious. For as I passed by and beheld your devotions, I found an altar with this inscription 'To the unknown God'; whom therefore ye ignorantly worship, him declare I unto you." How beautifully he catches their attention, by referring to something they are interested in. They start off on common ground well acquainted. Contrast the effect of this style of speaking with that of the man who plunges into what he has to say, like a schoolboy into his declamation.

Those inclined to skyscraping oratory, by which they shoot over juries' heads, and then wonder why they rarely get a verdict, could profitably study the style of the Lord himself, unquestionably the most effective speaker the world has known. See how constantly he uses the expressions, the experiences, the customs, the surroundings, of the every-day life of his audiences.

GENERALLY.

Do we learn something of value in studying the lives of heroes? Is there in this a sort of association with the great that is pleasant as well as instructive? Look at the list: Noah, the hero of the flood; Job, the great example of fidelity, "Though he slay me yet will I trust him," "The Lord gave, the Lord hath taken away, blessed be the name of the Lord"; Abraham, who gathered up the men of his household, and followed after and defeated the five kings of the plains, rescuing his kinsman and his family; Joseph and likewise Daniel, who rose by sheer force of character and intellect (humanly speaking), from being slaves in a foreign country, to the position of chief ruler of the greatest nations of their time (True, my Irish friend says of Joseph, "They told stories on the boy and put him in jail, but he got himself up in the world by publishing a book on dreams, and soon cornered the wheat market, and got a mortgage on the whole country, just like his descendants, these Rothschilds"); Moses who led a nation from slavery to victory, and stands confessedly the greatest statesman and lawgiver of history; David, the warrior, the king, with a soul great enough to ever promptly acknowledge a fault; Solomon, the sage of the world, whose sayings touch every phase of our lives. "It is naught, it is naught, sayeth the buyer, but when he is gone his way then he boasteth" (Prov. 20:14). "He that is surety for a stranger shall smart for it" (11:15). "Remove not the old landmark" (23:10). "Let another man praise thee and not thine own mouth" (27:2). "There is that withholdeth more than is meet, but it tendeth to poverty, and a giving that doth enrich" (11:24). "The liberal soul shall be made fat, and he that watereth shall be watered also himself" (11:25). A man of experience too; "Better to dwell in a corner of the housetop, than with a brawling woman in a wide house" (21:9). But we skipped Nathan, the man who could approach the despotic monarch, and beguiling him by a tale, draw forth his condemnation to death of the man represented, and then say to him, "Thou art the man"; and then Elijah, who could reply to King Ahab's charge against him, "It is not I,

but thou and thy father's house that troubleth Israel." Then have him assemble his hosts on Mt. Carmel for the great test, to settle who should be the God of Israel. After his great triumph and his slaughter of the priests of Baal who had led the people into debauchery, he runs all the way back to Jezreel by the side of the King's chariot, there to be frightened by a woman (Jezebel, the original of Shakespeare's Lady Macbeth), and to flee for his life to the wilderness, there to crawl under a juniper tree and beg the Lord to take his life, and let him give up the fight.

What more thrilling scene was ever enacted than by Elisha? The great Syrian general had come and had been healed of his leprosy. He had sought to bestow gifts of gold and silver and apparel. The great prophet had declined them all. Such blessings were not to be measured by such a standard. The prophet's servant, Gehazi, tired of his master's poverty, could not stand this, and slips out after the Syrian concocting a lie as the excuse of his master's change of mind, and "took somewhat of him." Returning he bestows his booty in a hiding-place and enters his master's presence. "Whence comest thou, Gehazi?" "Thy servant went no whither." "Went not my heart with thee when the man turned again from his chariot to meet thee? The leprosy therefore of Naaman shall cleave unto thee and unto thy seed forever." "And he went out from his presence a leper, white as the snow." 2 K. 5.

Peter, the unlearned Galilean, comes to be one of the mighty men of the world, and along with many others gives us this comforting truth ((1 Pet. 2:20): "For what glory is it if when ye be buffeted for your faults, ye shall take it patiently? But if when ye do well and suffer for it ye take it patiently, this is acceptable with God." Had Dickens just read this when he called Mark Tapley into being? "No, sir, no trouble, but everybody is so good and kind to me there, sir, that there's no credit to be got being jolly there; anybody could do it."

And last the world's greatest human benefactor, its greatest orator, its grandest, noblest man, him whom the world has united

in placing upon its highest pedestal of honor, the apostle Paul. All landmarks in the world's history, whose record is preserved for our benefit.

CONCLUSION.

Our responsibility is great. "To whom much is given of him shall much be required" (Luke 12:48).

In Ps. 19:11, we read: "And in keeping these laws is great reward." "A good name is rather to be desired than great riches, and loving favor than silver and gold" (Prov. 22:1). The simplest of us know that the great rewards to our profession go to those who are at least believed to "walk uprightly, work righteousness, and speak the truth in their hearts" (Ps. 16).

I trust that I have made out my case to your satisfaction, gentlemen, and that you will promptly render a verdict for me to the effect that, after the Code and a set of Georgia Reports, the next most important book in a lawyer's library is a well-indexed Bible.

APPENDIX I.

THE CRITICISM OF COURTS.

PAPER BY ROLAND ELLIS, OF MACON.

Mr. President and Gentlemen of the Bar Association:

In an effort to comply with the request of this austere body to furnish a paper for the annual symposium of Georgia legal wisdom, I have been much perplexed by two insistent considerations. The first—the crass unfitness of the one in this instance expected to comply with the request—I have put behind me, for the reason that I have patiently, during my connection with the association, heard and applauded papers more or less long, from nearly every member of it.

The second—the selection of a subject, which has not been broached, considered, digested and settled by those who are emperors in the kingdom of legal lore—is more difficult of successful disposition. To treat a topic already explored in these deliberations might prove disastrous, and, if I essay the dangerous flight, like the fabled Icarus, my wings of wax might fail as I neared the sun. So, without reading a discussion of any particular branch of the law, preparation of which has been unavoidably prevented, permit me to lay before you one suggestion, relating to a subject in which all lawyers are interested. I have been impressed in the last few years with the frequency of the expression, “Criticism of Courts.” The press teems with the term, and its use has become frequent among members of the bar. Whenever a decision is rendered by a court of last resort, however much that decision may conflict with one’s preconceived ideas of

right or law or justice, it has become customary—so generally indeed, as to approach the invariable—to warn all persons not to criticize the judgment. Such criticism is treated by many as a menace to existing institutions, and such critics as dangerous foes of law and order.

Indeed, so much has this idea grown, that the right to superstitious infallibility has, like a movable halo, by a system of declension, been transmitted somewhat to trial courts, there to envelop judgments good, bad, and indifferent with the chastened glow of its mystic light.

The press tells us that such criticism is the parent of anarchy. Some of the most prominent lawyers condemn it. Even papers read before this independent and fearless body have been deplored as attacks upon courts and laws which carried in them germs of surpassing danger. How this spirit of "*lèse majesté*" became transplanted in such prolific crop, of late years, to the soil of a republic is difficult to fathom. Research fails to disclose to me in logic or history any reason why courts should not be criticized, and their judgments discussed and approved or condemned, as, like other products of the human, they may be fit for praise or blame. That the most momentous affairs of all mankind—life, liberty and property—should be disposed of by the arbitrament of a very few of the race demands that the conduct of those few, and the few themselves, should be scrutinized with vigilance, discussed with fearlessness, and receive impartially the meed of that justice which has been earned.

Said Mr. Justice Brewer in an address: "It is a mistake to suppose that the Supreme Court is either honored or helped by being spoken of as beyond criticism. On the contrary, the life and character of its justices should be the object of constant watchfulness by all, and its judgments subject to the freest criticism. The time is past in the history of the world when any living man or body can be set on a pedestal and decorated with a halo. The moving waters are full of life and health; only in the still waters are stagnation and death." How true the observation! How many petty tyrannies, how many iniquities springing

from the exercise of a discretion which no appeal can correct, have raised their unwelcome heads within your own horizon, that in the presence of a press and people who were ready to discuss would have never shown their coward shapes.

What has ever been competent to cope with the terrible power of a judicial tribunal but the power of public opinion? Have you never reflected that courts in a republic are originally the creatures of that calm public opinion which has found expression through conventions of the people, or the people's representatives? What safer guardian of the creature may be than the creator?

Free and unrestricted discussion is essential to the foundation of correct public opinion. Correct public opinion, in a nation of freemen, must support the government and the laws, or the government must fall, and the administration of the laws pass into other hands. Upon that public opinion, which is the product of intimidation or misinformation, may rest the governing structure for a time, as a house built upon the sands, but with the storm of the awakening will come the downfall. No stable edifice can stand upon ignorance of error; truth, free, bold, naked, is the only rock. And the qualities of truth, as a foundation, are not doubted save by those who fear.

It is objected that free criticism of the judgments and personnel of courts inculcates disrespect for the law. Has any one ever told you that the source of statute law, or the duly constituted lawmaking body of a State, needed immunity from criticism in order to promote respect for its acts? And yet, the members of a legislature are bound by oaths as solemn and, comparing their number with the number of incumbents of the bench, are sustained by characters quite as high as the individuals who wear the ermine.

The free criticism by press and people of the men who make, and the measures made, laws, is not only salutary, but is the surest safeguard of the people that both govern. Should the body that administers the laws be less answerable to a fair but fearless scrutiny?

We have fair authority for the most extreme form of healthy criticism. Mr. Justice Brown declared that the decision in the income tax case would rise up some day in the hour of danger to paralyze the arm of the government.

Mr. Justice Harlan declared in the insular decision, that the constitution, by the opinion of the majority, had been so mutilated as to convert a constitutional government into a government of legislative absolutism.

Mr. Jefferson was right when he said of certain classes of the judiciary that there was no restraint upon them except the fear of impeachment, and that impeachment was not even a "buga-boo."

The ancient remedy of decapitation, referred to by our distinguished president in his address, was salutary and effectual, but had one great defect—it cut off the opportunity of reform on the part of the judge. While furnishing the most powerful, free criticism supplies at the same time the most humane remedy.

I have no grievance against the woolstack of Georgia, and no local dissatisfaction colors my judgment. Measuring my words, I believe that the Georgia judiciary presents the most stainless type of the high office that has ever, as a whole, blessed a State of this Union.

I yield to none in my respect for our able and distinguished judiciary. It has been a frequent bulwark between the aggression of wrong, and the security of right. We crown its righteous judgments with encomiums; shall we not set the seal of disapproval on the wrong? Have you ever thought of whom you are sometimes asked to clothe with the reverence of superstition? Reverence is the homage due to infallibility. Courts have not always been infallible.

Nisi prius courts in America have enjoined the gathering of citizens, have enjoined their conversation, have enjoined their passage along the public highways; and, out-Heroding Herod, have even prohibited the discontinuance of labor by employees, and punished for contempt the absent, until they have made the phrase "government by injunction" a synonym of modern tyranny.

Cross-burdened, thorn-pierced, a man-God tottered to His martyrdom, but the tragedy which crimsoned Calvary and saved a world was not a murder, it was a court's decree. Yet Pilate wore the ermine, and therefore shall no man say him nay? The judgments of courts fed the hungry flames with the food of martyred bodies. The compressed agony and tears of an age of Inquisition decorate the memory of the medieval bench.

The constitutionality of the infamous stamp act was affirmed by an American tribunal, and history shows that, unless the spirit of liberty had then been fixed in the colonial heart with strength divine, it would have been strangled from the bench.

Mrs. Surratt's wronged soul stands in the shadow to be reckoned with; while the cheek of Dreyfus-shamed France yet burns from the bewigged infamy of a court.

Not monstrous, but momentous and startling, is the reflection that, within a decade, overturning the precedents of a century, the high court of America, by a bare majority of one, protected the incomes of the rich, forced the most direful panic of the country's history, and paralyzed the arm of the government in the hour of danger; and, more startling still, out of the constitution of a republic has construed an empire and, exchanging the ermine for the imperial purple, has dealt a blow to freedom more dangerous than the allied armies of all the monarchs of the earth.

You may have tranquillity, it is true, and silence also, in the presence of justice and wrong alike. But the tranquillity that turns its placid face toward injustice is but the mask of decay, and within the false shell the worm feeds on the core of virtue.

You may receive the words of power-fortressed wrong with silence, but I say to you, that this silence is not the homage of honor. It is the silence of the sepulchre, yawning for its victims of human right and justice, against whose cruel mouth cowardice shall roll the stone that keeps them captive.

Who among those criticized, when such criticism is honest, objects? Fear of its white light is proclamation that a sore festers in the shadow. I know of no more worthy censor-body, endowed

with such learning, independence and virtue, before whom the conduct of courts could come, than the body of the bar. The very partisanship of advocacy, while it should never father unjust opinions from professional disappointment, lends that vital spark of interest needed to insure industrious scrutiny of the bench. But it must not be supposed that the bar, from its close contact therewith, is the only class deeply concerned in administration of the courts. When their property and their persons may be the fortunate or ill-starred grist with which the judicial mill grinds out justice or injustice; when, not only their private affairs are thus to be determined, but when these powerful tribunals hold in their hands the very structure and form of the government itself, under which the people live; when out of a court of nine, which is not even bound by its own decisions, five may make a fact and the minority of four only make an opinion; when the creature of a political body becomes the arbiter of questions which control, not only its material rights, but its political policy and life, men of the race which shed its best blood that this government might be born have the right to be heard.

In the name of the spirit of a conservative and law-abiding race, may the executive, legislative and judicial agents of the people receive from their principal, that same people, the fair-won guerdon of true respect. But may no false sense of conservatism strangle the voice of honest indignation or still the note of just alarm. May the lesson be learned and remembered, that the creature of the human, like the creature of a god, can never be greater than its own creator; that, as the officers of government for good service and high deeds receive the plaudits of the governed, so no perversion of place or power, no incompetency, misconduct or tyranny of rulers shall ever go unwhipt in the open forum of the world by those free subjects of that rule who are, at last, the highest sovereigns.

APPENDIX J.

DEFECTS IN THE LAW OF GEORGIA REGULATING PRIVATE CORPORATIONS.

PAPER BY SHEPARD BRYAN, OF ATLANTA.

The Code of Georgia, section 1833, declares: "A public corporation is one having for its object the administration of a portion of the powers of government delegated to it for that purpose—such are municipal corporations," and section 1834 affirms that "All others are private, whether the object of incorporation be for public convenience or individual profit, and whether the purpose be in its nature, civil, religious or educational."

The Constitution of Georgia (article 3, section 7, paragraph 18) provides that the General Assembly shall have no power to grant corporate powers and privileges to private companies, but charges it with the duty of prescribing by law the manner in which such powers shall be exercised by the courts. It is further provided in this clause of the Constitution that all corporate powers and privileges to banking, insurance, railroad, canal, navigation, express and telegraph companies shall be issued and granted by the Secretary of State in such manner as shall be prescribed by law.

In pursuance of these mandates of the Constitution, laws have been enacted prescribing the manner in which the Secretary of State and the courts shall exercise the powers conferred upon them.

It is not my purpose to discuss in this paper the whole domain of our law touching these private corporations. I desire to refer more especially to the laws regulating the ordinary business

corporation and to point out certain additions and changes which in my judgment are needed and would prove useful to our commercial and industrial interests.

The railroad commission, the insurance department, the treasury department, with its State Bank Examiner, have done good service in behalf of the people. Since there have been railroads and legislatures, the railroad has been the prolific source of legislation. Many good laws have been placed upon our statute books, and the lawmakers on the whole have held a just and even balance between these gigantic combinations of capital on the one hand and the people whom they serve on the other. The Railroad Commission for the public good might well be granted other and additional powers (particularly with reference to the building of depots adequate to the needs of the city or community served). But this is not within the range of my subject.

Our insurance laws—ably and intelligently enforced as they are by the distinguished Insurance Commissioner—are a credit to the State. They have, however, serious defects and need amendment. The Secretary of State, empowered and directed by law, granted a charter to a mutual fire insurance company. This company should then have gone to the other side of the capitol and applied to the Insurance Department for license to do business in the State of Georgia. This was not done, and this company, although unable to do business in the State which created it, masquerades throughout this country and Canada as an honest Georgia corporation and collects premiums from an innocent public without giving protection in return therefor. Our law, then, has created and turned loose a "wild cat," and the many policyholders who have suffered loss by fire, come to Georgia to collect their money and find that Georgia will create a "wild cat" to prey upon the people of other States while protecting its own people from these depredations. The law should be so amended that this condition could not be possible, and the charter should be revoked unless a license is applied for and granted within sixty days after the granting of the charter.

It would also be greatly in the interest of the people of Georgia if the legislature would provide a standard form of fire insurance contract, requiring all insurers to conform thereto as a condition precedent to doing business in this State. Few people read their policies, and such a law framed on just and equitable lines would benefit public and underwriter alike.

I will pause for a moment in speaking of our insurance laws to refer to an act passed by the last session of the General Assembly. This act regulates the business of fraternal benevolent associations. When we remember the vast number of persons who are members of these insurance orders, it is apparent that the subject is an important one. The act passed is substantially in conformity with what is known as the Uniform Bill, proposed by the National Fraternal Congress—a body comprising the greater number of the benevolent orders in the United States. I wish to commend the act as fair and necessary. The purpose of the act stated in few words is to protect the people from irresponsible so-called benevolent orders by requiring a license to do business, conferring power upon the commissioner to examine the association applying for license, careful and detailed reports of business done, etc.

I am especially interested in the private business corporation. The courts are empowered to grant corporate privileges and powers to these private companies, as we have seen. The exceptions have been noted above and briefly discussed in passing. Now let us turn to the statute, and in section 2350 of the Civil Code, we find what must be done in order to obtain a grant of corporate powers and privileges. Briefly stated, a petition for charter must be filed in the office of the clerk of the superior court of the county where the principal office is to be located and the petition must state: (1) The object of the association. (2) The particular business to be carried on. (3) The corporate name. (4) The amount of capital to be employed actually paid in. (5) The place of doing business. (6) The time for which the petitioners desire to be incorporated.

After this petition has been published once a week for four

weeks in the nearest public gazette, the court passes an order granting the charter and the corporation sails forth into the sea of industry and business.

Now when this petition for charter, with the order granting it, has been recorded in the Charter Book kept by the clerk, there is reached an end of all public knowledge of this artificial person—this creature of law—and thereafter, with its mantle drawn close about it, a deep dignified silence is maintained as to all of its affairs, until one morning the creditors learn with terrific shock that A. B. Company has gone into the hands of a receiver. The receiver finds a small amount of cash in bank and a small amount of stock on hand and a small amount of insolvent accounts to be collected. It is found on further investigation that one of the wealthy stockholders—at one time perhaps the president or vice-president—has many months before sold his stock and resigned his position. It is also found that a large note due the bank upon which this wealthy stockholder was indorser has been paid. And the creditors find nothing to satisfy their demands save a long and tedious lawsuit. Is it any wonder that they so seldom go into these proceedings to fix personal liability upon the stockholder and directors? If they had known as much before the failure as they learned within twenty-four hours after it occurred, they would never have extended the credit. But how were they to know?

These corporations have a charter filed; they make returns of their taxes, and if they obey the law (Civil Code, section 1866) they record in the office of the Secretary of State all bonds issued or endorsed by them.

My first suggestion is a minor one, but nevertheless important in my opinion. The law should require every corporation to have the word "corporation" or "company" attached to its name. I know that the distinguished judge of one of our judicial circuits always insists upon this requirement. But if it were the law the door would be closed to much possible fraud in a contest between personal and corporate liability.

Another defect it seems to me is the power which our law—

if not in reason at least in practice—confers upon a corporation of engaging in numberless kinds of businesses. Our statute says, "the particular business," but it is not uncommon for charters to be granted under which the corporation might indulge in any business, from running a midway show at Buffalo or swapping horses in North Georgia, to operating a sawmill in South Georgia. Our courts, in granting charters, exercise legislative and not judicial powers, and might well check this inexact and illegal practice by refusing to pass orders of incorporation where "blanket" charters are applied for. See *The Gas Light Company of Augusta et al. v. West et al.*, 78 Ga. 318.

The case just cited also holds that there is no provision of law authorizing any one to appear and object to the grant of corporate powers by the courts. This being true, what useful purpose is served by requiring a publication of the petition for charter for four weeks? I can see none at all. The entire proceeding is *ex parte* and the delay is useless. If the parties wish a charter it should be granted as soon as they comply with the substantial requirements of the law.

It has been doubted by many if the ordinary business enterprise should be granted corporate powers and privileges. The question is a grave one but the policy of this State is settled, and we find that most of our important and a large number of our unimportant business and industrial enterprises are chartered. The stockholders are liable for the difference between the amount they have paid upon their holdings in stock and its face value. Most of us know from experience at the bar that the cases where stockholders have been forced to pay have been very few and far between. The stockholder contends that his stock was fully paid. It has been so reported to commercial agencies. The helpless creditor finds his merchandise and money gone and no hope of recovery.

These evils might be largely remedied and public honesty and morality largely increased if corporations were held to a stricter account by the sovereign State through whose will alone they live and move and have their being. Let the court closely scrutinize the petition for charter. If granted, let the corporators meet

and accept the charter and let the subscribers for stock sign their subscriptions. Let the minutes of the corporation meeting be recorded in the Charter Book where the charter is recorded, so that the world may know (as it has a right to do) what persons are responsible for the use of the corporate privileges granted by the State.

I would not only require the subscribers to appear in the recorded minutes of the first meeting, but, where the stock is paid for in property and not in money, the kind, character, description and location of the property should appear. This is a fair demand and no honest person could object thereto. The man who puts in medicine receipts for fabulous sums and worthless equities in debt-consumed plantations and broad grants of land long since declared void and fraudulent as the equivalent of cash would find serious fault with such a change.

In a word, my idea is to so amend our corporation laws as to inform all persons dealing with a corporation and the public generally of the exact kind of person they have come in contact with. And I wish to furnish this information *before* and not *after* a fraud has been committed and harm done.

For the convenience of the people of the State and for those outside of the State having business herein, I would have a memorandum of every charter granted by the courts of this State recorded in the office of the Secretary of State.

But most important of all, I would require every corporation created by the law of Georgia to make a semi-annual report to the ordinary of the county of its legal residence (or better, in my opinion, to the Secretary of State), showing in fullest detail its condition. This report should show all assets and liabilities and many other things which would work for the good of the stockholder, the creditor, and the public.

In respect to taxation alone, this full disclosure required of corporations would bring into the treasury many thousands of dollars annually, and the corporation would equally, with the humble owner of a home, bear its proportionate part of the burden of government.

I have seen many cases where individuals slipped out of all

liability by means of a corporate cloak and have seen so much fraud and injustice perpetrated by these means that I am ready to advocate the passage of a statute imposing a double liability upon all stockholders. If this were done there would be fewer bankrupt corporations and the credit of our State would be higher.

If the insurance and banking companies make fullest disclosures to public officers as to their affairs, why should not all other corporations enjoying privileges conferred by the State submit to the same ordeal? I would establish a Corporation Examiner, as we have a Bank Examiner, and I would make the Secretary of State *ex officio* Corporation Examiner. He should have authority in the interest of the public, either upon complaint duly made or upon his own motion, to examine any corporation created by the laws of Georgia. I would give him the visitatorial powers which the superior court in theory possesses (Civil Code 1853), and never uses, and would have him use them for the public good.

The laws of Georgia regulating private corporations are defective in that they are loose and inexact and do not give the necessary protection to the public dealing with the corporation. They confer great privileges and powers, not the least of which is absence of personal liability, and do not demand therefor a just and sufficient return. The subject is too comprehensive, there are so many aspects of the question, that I have not even touched upon many of them, such as the winding-up of insolvent corporations, and I feel deeply the incompleteness of this paper, but time and your patience forbid.

I believe that a corporation act should be passed by the next General Assembly regulating these private corporations in every detail, from the incorporation to the surrender of charter by choice, or the winding-up of the corporation by reason of insolvency. Many valuable suggestions can be gotten from the General Corporation Acts of Delaware, West Virginia and North Carolina, and that much-abused "Mother of Trusts," New Jersey, will be found to have what I believe to be the most liberal, comprehensive and just corporation laws in existence.

APPENDIX K.

THE SIX CHARACTERS IN THE TRIAL OF CAUSES.

PAPER BY C. A. TURNER, OF MACON.

Mr. President, Ladies and Gentlemen:

While this address was in the formative state it was advertised under the title, "Law, Logic and Love," but after its birth it was necessary to change the name to suit its sex. This is permissible and is frequently done, otherwise that literary prophet of the nineteenth century would have been called *Victoria*, and "*Les Miserables*" might never have been written. It was in an effort to trace the relationship between law and love, the present subject was evolved. For I discovered that law, like love, was a continuous warfare, in which most skillful stratagems were enacted, and fierce and decisive battles fought. And that law is like love in another respect, in that those who fight her battles generally go in pairs.

SIX CHARACTERS.

This suggested that there were three pairs, or six characters in the trial of most causes; *yourself* and your *client*; the *judge* and the *jury*; and your *adversary* and his *client*. In order to wage the battle successfully one must have complete control of the first two; he must capture the second two; and the third pair he must put to rout.

YOURSELF AND CLIENT.

First: *Yourself and your client.* There are young men in the audience, and a chapter from the practical experience of those who have preceded them may be of utility. There are three

books which have been of inestimable value to me in the practice of law.

First, there is an old book of laws which by reason of its origin and its authenticity is sacred, but it is not alone because of its sacred truths we would advise its study, but for its literature, its law, its language, and especially its illustration. No other book is comparable to it as a book of literature, because it treats of so many different subjects, and treats of them so correctly and so well. Its law is the very foundation of all our laws, and the basic principles are here laid down so simply and so clearly, that by a study of them, you may easily reach correct conclusions upon principles which would otherwise be difficult to distinguish and to solve. Its language is the language of the common people. While they may not read it closely, they hear it expounded more than all other books. They are taught its stories from childhood, and when before the court or jury you can illustrate your case in the language of this "Book of books" and with one of its simple stories, attention is assured, and nine times out of ten you win.

SOLOMON'S CASE.

For the sake of illustrating what I now say I know you will pardon two personal allusions. A few years ago I was employed in a case the circumstances of which were as follows: A negro man had died in Macon who had accumulated a considerable fortune, and two women claimed his estate by reason of the fact, as they alleged, that each was his lawful wife. My client had been his slave wife, but shortly after the war he left Monroe county, came to Macon and took another wife and lived with her for nearly thirty years and raised by her a family of children. He continued some years after the war to make occasional visits to his old slave wife in Monroe. The act of 1866 provided that when a slave had more than one wife, he could select either and she should be his lawful wife. The contention of the Macon wife, who was represented by Judge Clifford Anderson, was, that he had not selected my client as his wife under the act of 1866. I contended that he had, and on this issue we went to

trial. During the progress of the trial Colonel Anderson's client testified that on one occasion she had said to her husband, "Why can't you have both of us for your wives. Go to Monroe and tell Aunt Lylie you will build two rooms down here, and for her to come and live in one. I will live in the other, and you will be the husband of us both." The husband delivered the message to Aunt Lylie, which she declined with indignation, declaring that he was all of her husband or none of her husband. Colonel Anderson made the strongest argument to which I ever listened. The duty was put upon me to reply. I knew from the tears which he brought to the eyes of the jury, while he at the same time appealed to their reason, I could never answer his logic, and the only hope left me, was to hit upon some homely illustration which would fit the case and which was familiar to the jury. During the course of my argument I recited the fact of his client's willingness to divide the husband with my client, and that mine gave him up rather than see him divided, and then told the story of how Solomon settled the dispute between the two women who claimed to be the mother of the same child. The jury very promptly adopted the wisdom of Solomon and this simple illustration won my case. This was an illustration from the Old Testament; just one from the new. I was recently engaged in the trial of a bankruptcy case before His Honor, Judge Speer. It is a rule in law that a corporation cannot go into voluntary bankruptcy. I was engaged against the corporation, and in order to defeat my clients the officers and directors, claiming to be creditors, filed a petition to put the corporation into voluntary bankruptcy. I filed objections and moved to dismiss the petition on the ground that the directors were in collusion with the corporation, and that their act was the act of the corporation itself, and that it was only an effort in an indirect way for the corporation to go into voluntary bankruptcy. I was arguing the question to the court that a corporation could not do by indirection that which it was forbidden to do by direction. The court did not seem to be much interested in the argument, and it occurred to me to try him with an illustration. I repeated

this Scripture: "He that entereth not in at the door of the sheep-fold, but seeketh to climb up in some other way, the same is a thief and a robber." I saw in an instant from the judge's look that he recognized the rule of law so tersely laid down in the great Book of laws, and that by this simple illustration I had argued my case more completely than I could otherwise have done in the hour allotted me. Of course I explained to the judge that I meant no personal allusion to my adversary, but had only quoted the Scriptures for the sake of the illustration. You know the devil can quote Scripture when it suits his purpose.

POWER OF ILLUSTRATION.

Speaking of illustration. The one thing next to character, most needful in becoming a successful lawyer and orator, is illustration. We should study to become great painters. To speak well, one must learn to speak in pictures.

The one thing which made Christ famous above all others as an orator was his power of illustration. He illustrated everything. "The Prince of orators," says another, "teaches a lesson of the immense value of pictorial eloquence in his habitual employment of illustrations. Each and all of his discourses have so many illustrations, and so brilliant are they, that they seem like stars in a firmament of thought. Those bright gems of imagination and originality rendered this great Orator's speech not only luminous but overwhelmingly persuasive. It is a very difficult task to shut the mind and heart against a beautiful image of truth. Like pictures that flash a world of objects upon the eye at once, so that what would take hours to present in detail is seen at a glance, so illustrations flash a multitude of thoughts instantaneously upon the mind; nor is this all; a thought once pictured remains forever. It is impossible to forget a truth that some illustration presents like a little drama, with many people acting."

Like this great Orator, we should study nature, and learn that in everything she has made there is a legal principle or moral conception, and like the flowers and the leaves, God has scat-

tered them everywhere, in order that we may gather them, and with which we may illustrate some great truth.

You can find these illustrations in the heavens and the earth—the sun, the moon, the stars—in the birds of the air and the beasts of the field—the fishes that swim and the serpent which creeps upon the ground:

“In the lion which shakes the earth with its roar,
And the lamb that skips upon the lawn.”
The mighty elephant with his ponderous tread,
And the tiny ant which begs a crumb of bread.
The Leviathan which lashes the sea into foam,
And the playful minnow in the brook at your home.
In the eagle which soars aloft and gazes in the sun,
And the humming-bird which sips its nectar from the flower.
In the magnolia, queen of flowers, in its beauteous bloom,
And the modest violet, with its delicate perfume.
In man, the masterpiece of his Maker’s skill,
Until he made woman with her sweet little will.
In the virago, who, by her power, makes us shake and squeak,
And the delicate hue upon the modest maiden’s cheek.

I saw this attempted once in the Supreme Court. It was in the good old days when that grand old man Hiram Warner was Chief Justice.

Hon. Fred Foster, that prince of good fellows and best of story-tellers, was presenting a case in which the judge was impressed that Mr. Foster’s client had taken an unfair advantage, and he asked if such was not the case. Mr. Foster replied, “Why may it please your honor, my case is as fair as the delicate blush upon a maiden’s cheek.”

The learned judge asked, “How old was she, Mr. Foster? *How old was she?*”

Foster replied, “Only sweet sixteen, your honor.”

“No, no!” replied the Chief Justice, “I wager she was a sour old maid.”

“Oh, no,” replied Mr. Foster, “that kind never blush.”

SHAKESPEARE.

Next to illustration the lawyer should learn to delineate character and study the motives of action. Life is one continuous

drama. The court-house furnishes the stage upon which its most dramatic scenes are enacted. The theater only furnishes a stage upon which imaginary characters play and pretend to do things; the court-house presents them in stern reality. No other book like Shakespeare lays bare the heart of man, and exposes the cause of his conduct. Aside from this he is matchless in his power of expression. Only one illustration. Parties in court, often conscious of wrong, become over cautious, and in their very effort to conceal the truth expose themselves. This simple quotation from Shakespeare, "So full of sin is guilt, it spills itself in fearing to be split," always satisfies the jury.

ERSKINE'S SPEECHES.

Next to the two books mentioned, if I were called upon to state the single matter which has been of greatest service to me in the argument of causes, I would unhesitatingly say the careful study and reading which I have given to Lord Erskine's speeches. We should not imitate the style of any one; this should be our own—but I do recommend the study of these speeches to every young man who would become a lawyer and an orator. Lord Erskine is as matchless in rhetoric and logic as is Shakespeare in expression and delineation. I regard his speech on "the right of trial by jury," as the masterpiece of rhetorical composition in the English language. It is largely due to this speech delivered in 1783, that we enjoy to-day the right of trial by jury, unhampered by the dictates of a biased and prejudiced judge.

YOUR CLIENT.

Having prepared oneself for the practice, the next thing devotedly wished for is a client. This is a most delicate situation. He comes to you with perfect trust and confidence, while you must *rely* absolutely upon him, unless you are prepared to live without him or go into other business. You must then treat him with perfect fairness if you expect him to treat you with perfect liberality. No relation is more close than that of attorney and client. He trusts you with everything, with the sacred precincts of his home, with his domestic relations, with the sad secrets of

his heart, with his property, with his liberty and with his life. Men have been known to kill other men, and become guilty murderers, who would never have dreamed of taking human life but for the advice of some misguided lawyer. The first thing to determine in consultation with your client is, as to whether he has a worthy case; the second, whether he has a reasonable retainer. The latter should always be secondary to and dependent upon the former. It is better to lose a fee than a case. It is better for you, better for your client, better for the court, and better for your country. Once advise your client that he has a case when you know he has not, and who can measure the consequences. First you violate your conscience and sell your honor. Second, you violate your client's trust and deceive him. Third, you undertake to violate the law of your country and deceive the court. The results are that you have gained a fee, but you have lost your client, you have lost your self-respect and the respect of the judge. You have advertised, if not your ignominy, your ignorance to the world, and become the laughing-stock of the court, the jury, the spectators, and worst of all, your adversary, and become despised of your client, for you have both deceived and robbed him, and by your infamy held up to ridicule and public contempt the man who trusted you, and "made him a thing of scorn for time to point its slow and moving finger at." Well may he reply to you in the language of the Psalmist: "For it was not an enemy that reproached me; then I could have borne it; neither was it he that hated me, that did magnify himself against me; then I could have hid myself from him; but it was *thou*, a man mine equal, my guide, and mine acquaintance."

THE JUDGE.

Having made terms with your client, you now come before that awful tribunal, the judge and the jury. How best may you capture them? First the judge. He sits, or should sit, as the embodiment of wisdom, fairness and perfect impartiality. As another has so happily expressed it, the only question any court should ever ask, is, "What is the law?" Your relation

with him may not be as confidential, but it is as delicate as that with your client. You should never, under any circumstances, strive to get him to do aught than to decide the law. Let us reflect for a moment what the lawyer does who tries to get the judge to adjudicate against the law. The very foundation upon which you stand is the law. It is this which gives you the right to take your client's money and appear before the court in his behalf. The entire fabric which you construct during your professional career must be bottomed here. Let this once be shaken and the whole edifice is in danger of tottering into ruin. Some years ago in one of the cities of the East the capitol building, which had cost millions of treasure, and which was the pride and glory of the nation, crumbled into ruins. The entire nation was startled and shocked because it was known that its foundations had been laid deep and most secure. In clearing away the débris and excavating for the erection of another building, down beneath the foundations the crushed bodies of two men were found, and on further investigation it was discovered that they had from their cottage, which stood near by, dug down beneath the foundations of the magnificent structure, when it fell and they were crushed beneath its ruins. So the lawyer, who insists upon a violation of the foundation upon which his entire fabric must rest may expect sooner or later to see the magnificent superstructure which he has builded crumble into ruin and he crushed beneath the wreck. The law is, as it should be, monarch of the universe, and not only every student, but every citizen, should, in obedience to its behests, bow in humble reverence. In illustration of this principle you will pardon a personal allusion to the first case in which I had the honor to appear before the Supreme Court (*Clower & Culpepper v. Wynn*, 59 Ga. 248).

I had carried the case to that court, and assigned as error that the judge's charge to the jury was ambiguous and misleading. I obtained affidavits from the jurors that they had misunderstood the charge. After looking into the question I found that a juror could not be heard in this way to impeach his finding, and when I began my argument I stated this fact, and that for

that reason I would abandon that ground in my motion. Judge Bleckley, in delivering the opinion, used this language: "Jurors of ordinary intelligence and reasonably attentive to their business would not be apt to misunderstand this charge." The judge then added: "It was conceded frankly by plaintiff's counsel that the affidavits of jurors tending to show that the charge in fact was misconceived, cannot legally be brought to bear on any decision which it is our province to make. That view is altogether correct, and the candor with which it was avowed deserves commendation. To yield a false position as soon as it is discovered to be false argues true professional manhood. Nothing but truth, or what is believed to be truth, is worthy to be championed by a lawyer." I was quite young when this decision was rendered, and felt very doubtful whether to accept it as a compliment or a reproach. The judge had discredited my intelligence by the suggestion that any ordinary juror could easily comprehend what I had failed to understand, and like most young fools, I am afraid at that time I put greater store upon my smartness than my honesty. I first thought it was a compliment, and then thought that it might not be. As General Toombs once expressed it in criticizing a certain judge who had apparently charged directly opposing views in the same case, I was in the position of a cow looking through the crack of the fence at her last year's calf. "She thought for a while she knew it, and then she thought she didn't." After time for more serious thought I have concluded this was the highest compliment the judge could have paid me, and I shall always revere and love him for it.

I had rather be written down an honest ignoramus than a wise villain. Ignorance may be cured by application, but villainy increases with practice and can only be wiped out by the costly blood of Jesus Christ.

THE JURY.

This brings us from the judge who is to rule upon the law, before the jury who is to decide the facts. What I have said with reference to your duty to your client and the court, and

your honesty to them, applies with double force here. You are an officer of court, and so are the jurors. They are not skilled in the measure and weight which should be given to facts in their application to the law, but are largely dependent upon you. While they may not be skilled in the law, their honest contact with the affairs of men, in every-day life, make them the unerring judges of character, and that lawyer who attempts to deceive them is simply engaged in self-deception and self-destruction. In approaching an honest jury, I always feel that I can hear the voice which spoke to Moses at the burning bush, saying: "Draw not nigh hither, put off thy shoes from off thy feet, for the place whereon thou standest is holy ground."

The right of trial by jury comes to us from remotest antiquity, and is so hoary with age that the history of jurisprudence does not give its real origin. Its very antiquity makes its sacred. If in the hoary head there is wisdom, this right is the very embodiment of wisdom, for it has the gray hairs of unknown centuries for its covering, and both the English and American courts, have declared it "the Bulwark upon which rests our rights of property, personal security, and liberty and life." Deception or corruption *here* strikes at the very foundation of all security, and it must of necessity recoil upon him who makes the assault; for as Mr. Lincoln has aptly and wisely said "You may fool some of the people all the time, and you may fool all the people some of the time, but you cannot fool all of the people all the time."

I am aware that of late years fierce assaults have been made upon the act of 1850, commonly known as the "Dumb Act," which forbids the expression of an opinion upon the facts by the judge; and some have suggested that the act must have originated in the brain of some quack lawyer, who had a guilty client he wished to clear. I have taken some pains to investigate the history of this act, and to see who was responsible for it.

ACT OF 1850.

It was introduced in the Senate of Georgia by Hon. Richard H. Clark, one of the kindest men and most just judges who has

graced the bench of this or any other country. His love for the rights of the common people was unsurpassed by any man who has figured in the history of our State. The bill was seconded and supported in the Senate by Andrew J. Miller, father of our distinguished brethren of Augusta. In the Senate it was unanimously adopted and passed. When the bill went to the House it was supported by George W. Fish, then of Bibb, and the father of Hon. Wm. H. Fish, who now graces the Supreme Bench of the State; by James A. Nisbet, also of Bibb, brother to Judge Eugenius A. Nisbet, whose eloquent words have been heard more than once on the Supreme Court bench in support of this high and constitutional right; by Joel A. Terrell, a great man and the great uncle of our present attorney-general; by Thomas S. Howard, James A. Pringle, Robt. P. Trippe, who afterwards became judge of the Supreme Court (and without whose kindly aid when I was a boy struggling for an education, I could not now make this address), and by that noblest Roman of them all, Charles J. Jenkins, afterwards governor of the State, and who preserved and kept the great seal of the State from dishonor when General Meade, a military satrap, with his army invaded its sacred precincts, and demanded a surrender of all its archives. This is the history of the act which is now sought to be destroyed by those who believe that virtue, wisdom and justice reside rather with the learned judge than the common people. In saying this I do not wish to be understood, nor must I be understood, as criticizing the judiciary of our State or Federal courts. I revere them and honor them, and I say that no other country has ever been blessed with so wise, conservative and honorable judges, both State and Federal, as our own; but what I do say is this, while our judges are wise, conservative and honorable, they may possess just as much, but they do not possess more virtue, than the common people from whom our jurors are selected. What juror could resist the charm of manner and persuasive eloquence of the loved and learned Bleckley in the expression of an opinion from the bench. Very admiration would incline some to go with him, right or wrong; and many would deem it an honor to surrender their opinions in deference to his.

As well speak of a girl resisting honeyed words, as they fall from the lips of her lover; and yet the story to which that girl listens may be the "Syren's song" luring her to ruin. If all judges were of that equipoise and as learned in the law as our beloved guest of honor, it would largely remove the objection to the expression of an opinion from the bench. Certainly so far as the Georgia Bar Association is concerned, for many of us believe him too wise to err, and we all know him too good to be unkind.

The learned judge closeted with his books, rather than with the common affairs of men, errs in his measurement of human conduct, rather than the common juror, accustomed as he is, by personal contact, to look upon the motives of his fellows, which cause them to act in every phase of life. I submit that such a juror would reach a more correct conclusion, unhampered by the opinion of a judge for whom he had respect and reverence, or overawed from fear by reason of his power. How often have lawyers, after spending months and months in the preparation of a case, had jurors give them a correct reason for their finding, which had never occurred to counsel on either side.

Regarding, as I do, untrammelled trial by jury as one of our most sacred rights, guaranteed by the Constitution, my voice shall ever be heard, not only against its abolishment, but against its abridgment in the least degree. Whenever this right has been abridged, oppression has followed, and the people have suffered. When unrestricted they have enjoyed their greatest freedom.

OPPOSING COUNSEL.

This brings me to the last division of my subject, your adversary and his client. And here is the "winter of your discontent." No profession like the law has a man on the other side, just as smart and as shrewd as you are, to expose your mistakes, your ignorance and your wrongs. Think of it, my friends, not the smartest man you ever saw, but a man who is actually as smart as you are, watching with eagle eye and keen delight

to expose your errors and your ignorance. Only think how you could expose the other fellow and put him upon the rack, and then you may see yourself exposed and writhing. And you must take it all in public and in silence, for your pocket is not yet so plethoric as to risk a fine from the irate judge for interrupting your adversary. Nor can you flee. You are an officer of court, and not only the interest of you client but the court demands your presence until the business about which you are engaged is concluded. "The court simply holds, while your adversary skins."

PROCRASTINATION.

Well, you have lost or won your case. You have either routed your adversary, or he has routed you. If the latter, congratulate him, and be as cool as you can. There is always one safety-valve of escape between yourself and your client—you can now whisper, when chambered alone with him, that which you dared not do in open session—you can curse the court. If you are victorious and have routed your adversary, the most needful thing in all your practice yet lies before you. You must *follow up your victory*. Now must be the time of your greatest activity. Whatever may have been your delays in the past, let there be no procrastination now. It has been said of old that procrastination is the thief of time. This is a mistake. Nothing robs time, but time is the possessor of all things, and is always present. Even while I make this statement some time is gone, but, like the circumambient air, other time has rushed in and taken its place. But procrastination robs you of all things except time. It robs you of body, of brain, of business and of reputation. Procrastination leaves time as your only stock in trade, and it is procrastination which "makes men have more time than money." I despise the man who says he has no time to do a thing. This is not the excuse of the business man, but the idler. He renders it not because he has no time—this is his only worldly possession—but because time has no place or use for him. You have read in your philosophy that nature abhors a vacuum. The one thing, or rather no

thing, in this universe which nature, God and the law abhor is an idler. Jurisprudence takes from nature, and the ever busy, constantly active universe, one of its oldest and truest maxims: "The law rewards the diligent, but despises the indolent and the sleepy.

Finally, that lawyer who shall be true to himself, true to his client, true to the court, true to the jury, true to his adversary and *his* client, is more than apt to be blessed intellectually with law and logic, and to have in his heart and home *love*, which is the fulfilment of the law.

APPENDIX L.

THE GEORGIA LAWYER AS VIEWED BY A WOMAN.

PAPER BY MRS. J. RENDER TERRELL, OF GREENVILLE.

I shall claim the privilege accorded to all prisoners at the bar, of making my statement not under oath, that my hearers may believe me or not at will. However, I am not fearful of being wholly disbelieved, as a woman can generally make a man believe anything she chooses. What a blessing that the lawyer does not possess the same tyrannical influence over the courts and juries of our land!

To establish my identity and give good reasons for being here and not at home where woman rightly belongs, I must waive all preliminaries and say that in answer to the complimentary summons from your distinguished president, I come as the humble prisoner of the Bar Association, and crave the mercy and consideration of this tribunal. Hesitating as to what verdict such a prisoner would receive from you, I searched the records of the Bar Association to know what judgments, if any, had been rendered in the past concerning the woman at the bar. I found on record only one trial case, headed, "The Future of Woman at the Georgia Bar," a paper read by Chief Justice Bleckley before this Association, at Rome, Ga., eight years ago. In his own original way the honored Chief Justice demonstrated woman's advent to the Georgia bar very much on the plan of a complicated geometrical theorem, and proceeded to solve the mysterious creature of the future. I quote from the decision handed down by the Chief Justice. To begin with he says that

"a woman is a compound complication and convoluted complexity in the original package." That one ruling of his honor is enough to check the legal proclivities of the feminine mind. He bases the whole theory of woman at the bar on the *one condition* of the applicant being a married woman. "There is absolutely no chance," he says, "for the maiden and widow at the Georgia bar." Now it is rather unfair and hardly ethical to impeach or call in question the past record of the Chief Justice while a widower, but you will readily understand his decision on the married woman at the bar, when I quote to you these few words taken from the same article. This is what he says: "I confess here publicly that I would consider an elderly lady lawyer a very desirable person to marry, were I disposed to contract matrimony again, and were any such character now a member of the Georgia bar." "At the same time," the Judge proceeded, "I disclaim any possible intention of invading the bar with matrimonial intent." This, however, was eight years ago, and you see from his subsequent action, which speaks louder than his dictum, that the Judge reversed his own decision, holding thereby that a widower's chance at the bar is as poor as a widow's—all concurring except the women, who will always dissent upon the question of a widower's marriage. I presume the Judge based his reversal of his first decision concerning his disavowal of matrimony upon three grounds: 1st, Because his first ruling might be considered, as lawyers call it, only *obiter dictum*; 2d, The decision was not rendered by a full bench; 3d, Because the doctrine was unsound.

Rejoicing at woman's continued absence from the bar, I come not as one who would enter the fold, nor do I come as the voice of one crying in the wilderness to prepare the way for the woman lawyer. Let us hope that several centuries are yet to elapse before she makes her *début* in Georgia's legal arena. I would have woman's interest identified with the bar and with state affairs only as advisory counsel and to aid and assist her lawyer husband. I heartily concur with the Chief Justice when he says that "with issue in the nursery clamoring for attention the

issue before the court and jury might suffer, and *vice versa*." "To be the mother of a great lawyer ought to content the ambition of the true womanly heart." So says the Chief Justice, and he is right. Woman is thoroughly united with the Georgia bar as the comforter of its misfortunes, and in filling her proper place she is an inspiration when the heart grows faint and the lawyer's life is filled with woe. Very few of us can believe with Bismarck that "all the qualities of woman are made to disturb political factors and bring misfortune on the affairs of men." Bismarck had evidently been indulging in some of Judge Bleckley's dyspepsia-dealing cucumbers when he dealt so harshly with us.

I would have woman's influence over the affairs of men and her power as a promoter of public good to be as grandly sublime as that of Aspasia of old, who, as the loving wife and brilliant teacher of Pericles, ruled the Athenians. Thus far would I have her influence go. As a pleader in the public courts of this State, may the day be far distant. That lawyer who has fallen from the advancing line of progress and prosperity is still to the woman that loves him "no less a hero though he is not one to any other, no less than a king though his only kingdom is in her heart and home." I would not play with fate in the fair and foul tempests of the lawyer's life. Life is short, eternity near, and the bar has troubles enough of its own.

Leaving without reluctance the vacant chair awaiting the arrival of the Georgia woman at the bar, I come to locate the Georgia lawyer, tell where he came from, where he is, and his future estate. Now, when I began to study the genealogy of the lawyer, I decided at once (as women generally decide at once) that lawyers were made simultaneously with the beginning. For there was Adam—I have always thought that he possessed a lawyer's trait, because he stirred up a fuss that brought on never ending litigation. Then, too, in the ages back there was Daniel, commonly called the first lawyer, and from whose genus doubtless the Georgia lawyer sprang, for even the lions refused an intimate acquaintance with him. President Hill's professional

modesty prevented him from referring to this. Mr. Hill also cited Moses, the ancient lawgiver, who read the law to the people every seven years. It occurs to me that if the lawmakers of this State would read the law to us only every seven years instead of making new laws for us annually, what a restful feeling the people would experience.

As to where the lawyer of to-day is, depends altogether on the species. If he is the plain, every-day variety, he is struggling not with Markham's "Man with the Hoe," nor with the Philippine agitation, but he is face to face with that grave, modern and most serious issue, the man with money in his pocket and how to put it there.

The future estate of the lawyer is still a more serious question. Doubtless you see yourselves on the front row with the elect, but if there isn't a great improvement, the future will not be near so cool as Mr. Davis's public pool.

But without further digression in the abstract, I proceed to our illustrious subject, that unsung hero of the South, that paragon of all that is noble and often abused, that defender of the weak and helpless against the inordinate greed of humanity—the Georgia lawyer—from a woman's standpoint. It is a hard task to deal with him properly and justly for more reasons than one. If I tell only part of the truth, the Georgia lawyer is left in a precarious condition; if I tell the whole truth, and nothing but the truth, he is irrevocably ruined. Certainly there are exceptions, but exceptions rarely flourish, and that is what you wish to do. Lord Brougham said that the "first duty of man is to provide for his own independence by his own work," so that is why you "eat the oysters and leave the client the shells."

I do not wish to dwell at length upon the history of the judiciary of Georgia, but a study of the bar is necessarily one of the judiciary, since the history of one has been intimately connected with the other since 1754, when judicial affairs were placed in the hands of the Philistines—lawyers I should have said. Prior to this date lawyers were not allowed. What a bright, cheerful elysian land this old State must have been! The 7th of July,

1733, must ever be of peculiar interest to the Georgia lawyer, for on this day Governor Oglethorpe opened and christened the first court ever held in this State at the little settlement of Savannah. Notwithstanding the absence of the Georgia lawyer the records state that it was an exceedingly hot day. True it is that the three judges, George Symes, Richard Hodges and Francis Scott, sat with dignity on a rude bench in a little hut, and true it is that it became necessary to complete the jury with two constables, but the bells rang out, cannons signalled the hour, and with the offering of prayer Georgia's judiciary from this lowly birth began its majestic march to its present grandeur and perfection.

One thing was sadly lacking—the Georgia lawyer. An old record innocently states it thus: "There were no pleaders of the law present, but some fine old English beer." This would seem to indicate that both lawyers and beer were not needed—that they were incompatible, and one could well exist without the other. Would that it were so even now!

With the establishment of the General Court in 1755, and with the provision that the judge should know the law, the Georgia lawyer sprang, phoenix-like, into shape, form and activity, and I have no doubt that in a week's time the inhabitants were wrestling with all sorts of *fi. fas.*, foreclosed mortgages and *man-lamus* proceedings. It is very evident to me that these lawyers were a very flush, hot-house variety, as can be judged by their fees. Seven shillings and one penny retained the best talent in the little Savannah town. Why, they say now, down in Savannah, those big lawyers make you pay seven shillings and one penny before you enter the office door, and after you get in you pay the rest—yes, and in some cases it may be that you pay all the rest. A brief was worth three shillings and seven pence. Think of it—a brief! In an old historical collection I found this entry of a lawyer's fee: "Received of ——— as a fee for attending court the day it snowed, at Fredericka, 36 miles, 1 pair of bearskin gloves and 1 bucket of corn." Now don't let the bucket of corn "disturb your peaceful meditations, as it was stipulated parenthetically that the "corn" was on the ear.

The records say the early lawyers were very useful in negotiating with and managing the Indians, and prevented much scalping among the settlers. The Georgia lawyer of to-day works much on the same plan. He, too, leaves his client's scalp, but that is about all. By the way, Judges Lumpkin and Butt, Hon. Charlton Battle, Hon. H. R. Goetchius *et al.* would have been immune so far as scalping is concerned. However, they are not the only ones who would have been safe, as it is generally believed that Indians never scalped people with red hair; so that if we had lived in the early days as did the above named friends, Mr. Hill and I would have been in no imminent danger.

All loyal Georgians should hold in proud remembrance the heroic lawyers in the early days of the profession. It was a life of hardship to be found in any newly settled country. He did not have a cool office with electric fans and an office boy wearing a new-style collar. His days were spent in toil, and his legal knowledge, very scant no doubt, was gained in moments stolen from the outdoor life of cultivating the lands and clearing the forests of the new Southland. However, in attaining legal knowledge the early lawyer had this advantage, the law, or rather the statutes, had not reached the present voluminous size, for the legislature had not then commenced to thrash out a rich harvest of new laws every year. The difficulties of poverty, the dearth of law literature, the lack of instruction, were the influences that stirred the ambition of Georgia's lawyers and filled her history with brilliant names and glorious records. I cannot mention all, but give the preference to those valiant ones who fought singly and alone for fame. Jacob Martin had neither money nor friends, yet, enduring toil, hardships and destitution, his great will conquered all, and his is to-day a life you should ever emulate and a name you should ever honor. He made it a life-long practice to read Blackstone through once a year and said he always learned something new. I daresay some of you have never gotten quite through it. Eli S. Shorter, illiterate, poor and friendless; Wm. H. Torrance, Geo. W. Townes, and hosts of others, had absolutely no advantage save the fires of ambition that

would not be smothered. Georgia's early governors were lawyers who possessed that splendor of manliness, and moral greatness developed by individual effort. Among them we find Wm. Bulloch, John Milledge, Sir James Wright, Archibald Bulloch, John Martin, and Richard Howley. These were the lawyer-governors of early Georgia, who held the young State in infancy, guided her faltering footsteps and pointed out to her the paths of peace, prosperity and fame. But, my friends, don't let this little piece of information about lawyer-governors of Georgia enter the peaceful habitation and happiness of your professional life, and with the enchanting buzz of the political bee allure you on like the song of the siren to misfortune and despair. Very few office-holders can say with our own Richard Henry Wilde, the poet lawyer of Georgia:

"My life is like the summer rose,
That brighter with the dewdrop grows."

For instance, there was Gov. John Martin in 1782, who had to appeal to the legislature to make special provision for his family to keep them from starving. Let doing well enough alone, and if there is a comfortable living coming to you, if you have paid the last installment on that new set of law books, if you use sugar in your coffee instead of sorghum, and if you keep a nice little pass tucked away in your Sunday coat pocket, I say you had better thank fortune and fate and hold fast to that which is good.

In order that we may follow the careers of Georgia's famous lawyers, let us consider the establishment of our courts. First, there was the General Court in 1754, consisting of one judge (called Chief Justice) and three associates. The Chief Justice's salary, with fees and perquisites, amounted to about \$5,000.00 a year, while the Associates were paid nothing. Imagine, won't you, Judge Simmons drawing all the pay! Judges Lumpkin, Lewis, Little, Fish and Cobb would have proceedings without much delay compelling him to divide. The first twelve Chief Justices were Groover, Anthony, Stokes, Glenn, Stevens, Werriat, Burke, Howley, Walton, Stith, John Houston and Nathaniel

leton. Of these Burke and Houston were elected, but we have no record of their accepting and filling the office. Suppose, however, they did, as it is characteristic of lawyers not only to take anything they are elected to, but anything else in sight. Under this régime the State comprised of only one circuit. The Superior Court established by the Act of 1789, known as the Judiciary Act, and the office of Chief Justice was abolished. There were now two circuits—the Eastern and Western—and in 1790 the Middle Circuit was created. With the establishment of the Superior Court we come to the names of many distinguished lawyers. Among them, John McPherson Berrien, called the American Cicero; Wm. H. Crawford, the statesman and diplomat; John Forsyth, the matchless orator; John M. Wythe, the versatile lawyer and wit of the Georgia bar; Andrew Miller, eminent as a lawyer and man of affairs; Wm. H. Woodward, the humorist and eloquent advocate; Thomas Cobb, distinguished as a lawyer and jurist; Eli S. Shorter, a man of rare legal gifts; Richard Henry Wilde, the poet lawyer; Thomas R. R. Cobb, the brilliant lawyer, and in that day of great men, the acknowledged head of the Georgia bar; and Herschel V. Johnson, politician and man of splendid intellect.

Even under the just rulings of these statesmen Georgia felt the urgent need of a higher court of appeal. For 56 years they were at the mercy of the Superior Court judges, and the years preceding the establishment of the Supreme Court was called the "twenty-year struggle." Georgia is indebted to lawyers for the Supreme Court. Their professional affairs put them in close touch and sympathy with the two bitter parties—the enthusiastic promoters of the court and those who opposed it from ignorance and prejudice. Among the lawyers whose eloquence and efforts so ably contributed to the establishment of this Court was Christopher B. Strong, the first of the Georgia bar. His eulogy on that body before the Supreme Court composed of Justices Lumpkin, Warner and Bibb is a legacy in Georgia's legal lore. Bent with age, his

presence was proudly distinguished as he addressed these words to the Court: "May it please your honors, my experience at the bar dates back nearly forty years. I thank God that my life has been spared to this hour to behold a tribunal for the correction of errors. I may adopt the language of one of old and with slight variation say, Now, Lord, let thy servant depart in peace, for mine eyes have beheld the salvation of the judiciary of Georgia." Judge Strong's career was full of many interesting experiences on the bench. His old age was burdened with a debt he incurred as surety for a friend, and he very often quoted to his associates the words of Solomon: "If thou be surety for thy friend, deliver thyself as a roe from the hands of the hunter and as a bird from the snare of the fowler." Another champion of the Supreme Court was Governor Forsyth, a lawyer of national reputation. His message to the legislature in 1828 gives good insight to the then existing affairs. Among other things he said: "It is an awful reflection that life, liberty and reputation are with us dependent on the decision of a single judge uncontrolled and uncontrollable within his circuit." Forsyth's matchless oratory and the purity of private and political life won for him a name that will be honored and revered always. While in the United States Senate he had no superior as an orator, and by many he was called the equal of Lord Erskine. The debate between John Forsyth and John McPherson Berrien in the famous Anti-Tariff Convention in which Forsyth is said to have vanquished the eloquent Berrien, is one of the memorable occasions in the annals of State history.

In connection with the Supreme Court must be mentioned James M. Kelly, the first reporter of that body. Mr. Kelly began his legal career in a Justice Court over the dastardly murder of a small fice dog. This seems a very trivial case at first thought, but we must remember that our Supreme Court judges lost many hours sleep some years ago over a case in which was involved a few cups and saucers to the amount of about 15 cents. Do not think for an instant that the fice dog mentioned was too insignificant for a legal affray. The dog, be he fice or Foundland, has

ever been a sacred animal in the history of Georgia. Statesmen, politicians, and even grand juries trespass not upon his dogship, neither do they assail his canine character. As for the legislators, true to the home constituency, they have promised that without molestation, so far as they are concerned, the Georgia dog could, like Tennyson's Brook, "go on forever." Mr. Edward Atkinson, the economist, has even suggested that the columns bearing the motto "Wisdom, Justice and Moderation" be supplied by a picture of a yellow dog chasing a flock of sheep, with this inscription, "*Cave cani.*"

But to return to the Supreme Court. Its establishment was the signal step in the history of the bench and bar. Removed from local influence it stands as the very bulwark of justice to each and all regardless of class, color or condition. We owe it not only praise and appreciation, but that more substantial token, an increase in what is, after all, a meager salary for one of our judges. I do not mean that a "wasteful leak" should be created by exorbitant salaries, but it is my very humble opinion (and need disturb no one) that our Supreme and Superior Court judges should not be elected by the people, but should be appointed, and they should be paid salaries that would enable them to live in ease and comfort for life, and be free from the dangerous fetters of popular election. Yes, pay them well, and let them wear the official robes, for I fear it is about the only robe some of them will ever wear.

The Georgia lawyer in politics is fearfully and wonderfully made. He has ever been, still is, and will continue to be the principal ingredient in a fine old "mix-up." He is as intimately associated with State affairs as cause and effect, and the supply so far exceeds the demand that it would take Edward Atkinson, the economist, to balance our professional and political economics. He is the inevitable, the shelter in the time of storm. Since the days of the old General Court, lawyers flock into politics very much like ducks into water, and if the comparison is not odious, the two are somewhat similar, as politicians have to "take water" very often. However, if they take nothing stronger I shall not

criticize. It is to be deplored by the profession that so many of the young lawyers grow faint-hearted in the dull and humdrum existence of the first few years of practice, and thirst for that short-lived glory and glamor afforded by public life and politics. They thereby neglect practice, profession and family. Yes, I say family, for if you will pardon personal allusion, I know by my own experience that, while the head of our little family was striving for legislative honors, I was at home living on this same glory, glamor and—greens, and very little meat in them. Don't run after politics, and it won't run after you. True, in the ages back, they ran for Cincinnatus and carried him from his farm and fields and set him in the high places, but I daresay a woman was behind that, as Cato said, "The Romans govern the world, but the women govern the Romans." Times haven't changed so much, after all. Taking Cato as authority, if you would win political battles, get the women on your side.

But do not take the life of Cincinnatus for your criterion and think that you must discourse on your ploughing days in order to catch the "man with the hoe." Remember that if a man has been near to nature's great and generous heart; if he has been up at "incense-breathing morn," and has "heard the lark begin his flight"; if he has turned the mellow soil and toiled 'neath a summer sun, the marks and influences will be upon his life, and all men will know that he has shared in days gone by the happy lot of the boy behind the plow.

As I have said, we need the life tenure of offices to check the avalanche of lawyers that sweep down on this good and unsuspecting old State. State affairs will never suffer for great leaders according to the survival of the fittest, and we need the strong and conservative lawyer in the every-day walks of life.

There is yet another consideration for the lawyer politician. If the age of expansion has seized upon you, and you wish to adopt the American policy of getting something that doesn't belong to you, cling to your profession and hold to your money, but don't hold to it quite as long as Bryan does to his money views, as there is a time to turn everything loose. Money and politics

thrive but poorly together, and if you wish to enjoy an office, get rich first. James Jackson, a celebrated lawyer of this State, was fast accumulating a fortune when he gave up his profession for the turbulent life of a politician, never ceasing in after years to regret it.

The experiences of lawyers in politics, if we could know the secret sighs and trials, would cause many a vacillating one to pause and think before taking the fatal step. I remember an incident in the life of Colonel J. M. Terrell, if he comes under the head of politicians, which came near ending direfully. In his much younger days he was making a race for the Georgia Senate, and in trying to canvass the Thirty-sixth District in one week he was brought home more dead than alive. Lying very still, with the pallor of political sickness upon his face, we thought him distressingly ill. Bending to catch his feeble words, we were astonished to hear him ask: "Doctor, what's my temperature in Campbell county?" On being told that it was far above normal, he arose, took up his bed and walked—the fear of the people preventing him from using his pass.

The lawyer in politics should from the very nature of his position stimulate and encourage the moral element innate in every heart. "There are," as Shakespeare said, "already liars and swearers enough to beat the honest men and hang them up." Humanity, however depraved, idealizes the man in public or private life who possesses the courage to fight for the cause he knows to be right and who uses his influence in forcing others to stand with him. True there have been and will be cases where this very moral grandeur of a man's life has defeated him in politics. Such a failure from such a cause is a glorious defeat. Better live the life of a Godly man and be called a political failure, than die the inglorious death of that one who is untrue to the great trusts of life.

The country lawyer—Well! Pick him up tenderly, paid so slenderly, treat him with care! Now, as Macbeth said to Banquo, "Let us speak our free hearts each to the other." The country lawyer, peace be to his ashes and cool his resting-place, is in-

nately a creature of many wants and small possessions. He looks with longing eyes on the rich man's acres and languishes to write his will. He rises while it is yet dark, dons his garments of last year's style, and wends his way to the office to meditate on cases that never come, and dream of the time when he, too, can lie in bed until 9 o'clock like some city lawyers and read all about the Atlanta depot, and look at the viaduct pictures in the morning papers while waiting for his breakfast. He dreams, too, of the time when he will have an office boy to show the hesitating client in, and to lie neatly about his absence when the bill-collector comes around.

The country lawyer is indispensable in the nation's history, and he needs to become satisfied with his home and not catch the spirit of moving to cities already overrun with anxious attorneys living on half rations and wearing remodeled clothes. It is much the battle of the weak against the strong. Stay in the country, unless you are sure you possess that indefinable something that carries a man rapidly on the tide of success. But you say the small town is already crowded with lawyers. Well, you go to work and send two or three to the legislature, and if that doesn't kill a lawyer professionally, it will, at least cause the proverbial "dry drouth" in his business. Riding sixteen miles in the rain to Justice Court with one-half bushel of potatoes and two loads of shucks for a fee is rather disheartening I will admit, but we must believe with Chief Justice Bleckley, that "service is better than salary, and duty more inspiring than reward." Don't think that I draw any lessons from the hardships experienced by the Greenville bar. We don't have them, as Greenville has the best bar in the State—all concurring except "Mr. Poindexter" and other convivial friends who dissent specially and think that the Warm Springs bar is the best. You are not alone, gentlemen, for even Blackstone was fond of good old port, and Coleridge said that "lawyers are like musical glasses, to get the best tones keep them well wet." The Greenville bar is, however, like the Warm Springs bar in two respects—both are very flourishing and doing a big business.

But seriously, the history of the Greenville bar is one of which we are justly proud. The old court-house erected in 1832 is one of the landmarks in the history of Georgia lawyers, and has been the scene of many notable events in the days of old when Benj. Hill, Wm. Dougherty, the two Warners, Walter T. Colquitt and Martin J. Crawford met in legal battle. Greenville was the home of Chief Justice Hiram Warner, whose memory will ever be cherished as the ideal lawyer and distinguished jurist. Judge Obediah Warner, a brother of the Chief Justice, also lived in Greenville and served with great ability and dignity as judge of the Coweta Circuit. It is only just that I should mention with these our own Wm. Y. Atkinson, who ever proudly claimed old Meriwether as home, and cherished the halcyon days of his youth spent within her borders. His life and death are fitly expressed in these familiar lines: "He died where manhood's morning almost touches noon, and while the shadows still were falling toward the west. He had not passed on life's highway the stone that marks the highest point, but growing weary for a moment he lay down by the wayside, and using his burden for a pillow, fell into that dreamless sleep that kisses down his eyelids still." These are names of the past, but we have with us to-day one who honored the Greenville bar as Solicitor of the Coweta Circuit in the presence of Chief Justice Bleckley, whose life and teachings embody the highest ideal of the Southern lawyer.

There is yet a type of the Georgia lawyer to whom I must refer. He filleth our very souls with envy, and his blissful life of peace, prosperity and plenty is like unto a grand sweet song. You no doubt recognize from the conscious smiles of some of the brethren that I refer to the corporation lawyer. Speaking of them reminds me of Judge McWhorter and the peculiar effect some words have on his "Southern" mind. For instance, this morning I encountered his portly personage in a doorway. The Judge, not seeing me, I asked him to "pass, please," whereupon he said in his most affable manner, "Mrs. Terrell, I would be delighted to do so, but I left my book of *passes* at home."

The corporation lawyer baffles my inquisitive mind by the very

ease in which he exists while waiting for a living to come to him. They toil not, neither do they fail to "spend," and Solomon in all his glory knew not half of their joys.

The Georgia lawyer of to-day stands in the full dawn of professional success. There is no height to which he cannot soar and no honors he cannot win. What he most needs is profound concentration to study, and the laudable ambition to deal not only with State affairs, but to rise as a long lost star in the political life of the nation. In the advancement of literature and facilities for study, men have taken a short and easy road, so to speak, into the profession, and as a general rule have neglected that broader and more liberal learning we find perfected in the great scholars of fifty years ago. That is one of the reasons why we cannot measure intellectually with the bar of the past which is forever made immortal by the names of Berrien, Charlton, Cobb, Colquitt, Crawford, Dawson, Dougherty, Forsyth, Hill, Jenkins, Law, Lamar, Lumpkin, Miller, Nisbet, Stephens, Warner and Toombs. We need the old-time ambition for legal education that made Joseph E. Brown drive a yoke of oxen 130 miles in order that he might reach a school and obtain legal training. Walter T. Colquitt, putting aside false pride of dress, went off to college wearing a hat made of rabbit skins, but that did not blur the brilliancy of his mind.

The lawyers of Georgia need to work out their own salvation professionally and politically, and not only Georgia, but the whole of our Southland must fight her own battle and be the "arbiter of her own fortune" if she emerges ever from the bonds of the intellectual and political inertia of the past. To the strong and uplifting influence of the Georgia bar is the work commended.

Before closing I beg leave to submit the following lines that suggested themselves to me after having heard the able and admirable paper on "Delays and Technicalities of the Law," read last evening by Hon. Reuben Arnold, of the Atlanta bar. I will not call it poetry, as lawyers and law rarely suggest the poetic to my mind:

The parson points the way to heaven,
And then with tender care,
The doctor consummates the work
And sends the patient there.

But the Georgia lawyer would delay
Departure with such cries:
"Hold! Can this man read his title clear
To mansions in the skies?"

In doubt he files a brief, and seeks
To hold the ignoramus,
And stop his flight to heavenly bliss
By appeal or *mandamus*.

The very elect thus would be
Of justice unrewarded.
If lawyers would the people please,
Let speed be more regarded.

I now wish to beg the charitable consideration of those with whom I have dealt personally. I would not lay the lightest burden on the heart of the Georgia lawyer. Far sweeter for me to link laurel around his name and fame, and crown him as the "man worthy of the past and prophetic of the future."

APPENDIX M.

EVOLUTION OF AMERICAN CITIZENSHIP.

PAPER BY WILLIAM L. SCRUGGS, OF ATLANTA.

Some of our Latin-American neighbors object to our colloquial phrase "American Citizenship." They tell us there are sixteen other independent republics on this Continent, and that a citizen of any one of these may as rightfully lay claim to the title of "American." They seem to forget that we preceded them into the great family of nations by nearly half a century, and that we came in under the name and title of "The United States of America"—not "The United States of *North* America," as they delight to call us. Of course by "American Citizenship" we mean specifically citizenship of the United States; and by "The United States" we mean a single national entity, as distinguished from a league or compact between sovereign states.

That there can be no national entity without people, is a self-evident proposition. There must be an association of *persons*; an association of persons for their mutual protection, advantage, and general welfare; and they must be bound together by the tie of common obedience to some central authority. For without such common obedience, there is anarchy; and anarchy excludes the idea of national unity.

Each individual thus associated and bound together becomes a member of the nation; and, for mere convenience, it has been found necessary to give a name to this membership. The object is to indicate by title each individual, and his relation to the community of which he is a member.

For this purpose we employ the terms "citizen" and "subject." The choice between them, and the specific or technical meaning to be ascribed to the one selected, is the prerogative of every independent State. But in their general sense, the two words are

convertible terms. International law knows no distinction between them—neither of them signifying anything more than individual membership of the nation.

For some reason which does not clearly appear of record, our British ancestors, the founders of our government, chose the alien term "citizen" instead of the indigenotus and more familiar word "subject," as the title of membership of the new nation. This was a radical departure from their traditional forms of speech, and could hardly have been capricious or accidental. There must have been a purpose in it. And the natural inference is that, by the term "citizen" they meant to indicate a self-governing state. Yet this is only an inference. For they made no attempt to define the word "citizen"; nor did they indicate any choice between its various definitions then current.

And this, too, must have been the result of design rather than oversight. For not one of those definitions would have accurately described the condition of the people of this country; while to have formulated a new definition, applicable to future conditions, would have required a prescience quite beyond human reason. So, with prudent forethought, the Fathers left the technical meaning of the word to be evolved with the progressive unfoldment of a national public sentiment.

Take, for illustration, Aristotle's definition, which was the one then generally accepted, namely, that "a citizen is one to whom belongs the right of taking part in both the deliberative and judicial proceedings of the community of which he is a member." This seems to exclude all female members of the community; and if, in order to avoid this, we assume, as we reasonably may, that the pronoun "he" is here employed in a generic sense, we come to a still greater difficulty. For we then have the naked proposition that *every* citizen, without regard to sex or condition, has the right of participation in both the legislative and judicial proceedings of the government, which, as a matter of fact, was never true in any age or country. It was never true even in the most licentious of the ancient democracies. It was never true in the most democratic of the ancient republics. Nor is it true of any country of modern times. All Greek citizens were neither legislators nor magistrates, much less both at the same time. All Roman citizens were not even qualified electors, much less lawgivers and judges. In the

Dutch republic, the right to vote was never coextensive with citizenship. In Switzerland less than half the citizens are voters. In France, the cradle of modern democracy, every French woman is a citizen, yet no French woman has ever voted. In the Latin-American republics, where there has been the nearest approach to universal suffrage, no woman was ever an elector. And in our own country, where women are recognized citizens, no woman is a legal voter in virtue of her citizenship.

Again, traditional forms of speech often survive the reasons for their use, and thus become either meaningless or misleading. No one, for instance, ever thinks of applying the title of "citizen" to a British subject; no one ever thinks of applying the term "subject" to an American citizen. As a reason for this distinction, we are told that the subject is merely governed, whereas the citizen also governs. But if this was ever true, it is no longer true. In England, many subjects also govern—in that sense they are "citizens" according to the generally accepted definition of a hundred years ago. In the United States many citizens are merely governed—in that sense they are "subjects" according to the same definition.

It results, then, that in the process of time, there have been evolved two classes of citizens and two classes of subjects, namely, one which has and one which has not the right of suffrage. And since the two similar classes sustain identical relations to their respective governments, the dissimilarity of title involves merely a distinction without a difference. Any native-born or naturalized person of either sex, entitled to full protection in the exercise and enjoyment of all the natural or so-called private rights, as distinguished from political rights and franchises, is a citizen or subject—the choice between the terms being no longer material.

One of the peculiar features, then, of our constitutional and political history is, that, up to about thirty-three years ago, there had never been any attempt at an authentic definition of the phrase "citizenship of the United States." We searched in vain for such a definition. It could be found neither in the Constitution, nor in our legislative annals, nor in our judicial decisions, nor in the contemporaneous action of any two of the coordinate departments of the government. In its elements and its details, citizenship of the United States seems to have been as little understood, and as much open to speculative criticism, as it was at the foundation of the

government. Eighty years of experience had taught us neither the exact meaning of the term nor any very clear conception of the thing itself. We were justly proud of the title of American citizen, and appreciated its benefits; but whether it meant membership of a nation, or membership of a constituent commonwealth, we hardly knew.

Our first attempt at an authentic definition of the phrase was made as late as July, 1868—just thirty-three years ago. It will be found in Article XIV. of the Constitution, usually cited as “the Fourteenth Amendment.” It is therein declared that “all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” And the Codes of the several States, conforming to this definition, each now declares, in substance, that “all citizens of the United States residing in the State” are citizens of the State—thus excluding by implication all persons who are not citizens of the United States.

This was the turning point in our national history. It marked the close of a distinct era in the evolution of American citizenship. It created, for the first time, a central authority demanding the personal obedience of every individual citizen, and thus made us a nation in fact as well as in name. Up to that time it had been a mooted question whether a person could be a citizen of the United States except as he was such incidentally by reason of his citizenship of one of the constituent commonwealths or states. Consequently, whether his primary allegiance was not due to the State, even as against the authority of the federal government. And, corollary to this, whether a person born and residing in the District of Columbia or other mere territory of the Union, although in the United States, and subject to its jurisdiction, was in reality a citizen of the United States. The Fourteenth Amendment settled this vexed question at once and forever by establishing a citizenship of the United States independent of State lines. A person may now be a citizen of the United States without being a citizen of any one of the several States; but by no conceivable possibility can he be a citizen of a particular State without being first a citizen of the United States.

I am aware that there are still differences of opinion on this latter point. It is pointed out that in some of the States—as, for

instance, in Kansas and Minnesota, and some half-dozen others—a resident alien enjoys a *quasi*-citizenship. After having made a preliminary declaration of intention to become a citizen of the United States, he is admitted to the privileges of the ballot in the State wherein he resides, and this is said to be the highest evidence of citizenship. But this anomalous condition of affairs is, it seems to me, of very doubtful legality. Certainly, the national government can take no cognizance of it in passing upon the right of such person to protection as an American citizen. He is not a member of either State or nation; for a mere declaration of intention to become a citizen does not, in itself, make him a citizen. It is not in the power of the State to naturalize him. Nor can a State alter, modify, or nullify a naturalization law of Congress.

It is likewise true that our national Supreme Court has declared, incidentally, that "there is a citizenship of the United States and a citizenship of the respective States." The Fourteenth Amendment declares the same thing directly: a citizen of the United States is also a citizen of the particular State "wherein he resides." He owes it a secondary allegiance. He is amenable to its laws in so far as they are in accord with the Constitution and laws of the United States. It may tax his person and property. It may deprive him of his property for non-payment of taxes. It may, by judicial process, deprive him of life or liberty for violations of its criminal code. But it can not expatriate him; that is an attribute of sovereignty pertaining only to the nation. Nor can the State deprive him of any one of the natural rights incident to his membership of the nation. He is, first of all, a citizen of the United States, and, as such, may invoke its power against an unconstitutional act of the State legislature.

On the other hand, it is well to remember that there still remain certain constitutional rights of the particular States, especially with respect to the suffrage, which can not be ignored. Thus, for instance, under an existing law of Congress, an alien resident of a territory may become a qualified elector therein. He may vote at the first election, and, under certain specified conditions, he may vote at subsequent elections. But suppose he remains an alien resident after the territory has been admitted to full statehood? It is then a question well worth considering whether, in the absence of some enabling act of the State legislature, he can be deemed a legally

qualified elector. I hold that he can not. In the Territory, Congress prescribes the qualifications of electors; but in the State, the right to vote can be conferred only by State laws.

Upon what grounds, either of law or expediency, the legislature of a State, or Congress in a particular territory, is justified in giving the ballot to a resident alien is not clear. Indeed, it seems to me to be wholly indefensible. Alien and citizen are correlative terms. They stand in contradistinction to each other. They can not co-exist. They are so opposite and contradictory in their nature that we can not conceive of the one except as the antithesis of the other. To give an alien the ballot is to give him direct control over the action of the State government, and indirect control over the action of the national government, while he yet owes allegiance to some foreign power. Not being a member of the nation, he can not claim its protection. He can not even petition it for redress of grievances. All such complaints and petitions must come through the diplomatic channels of the government to which he owes allegiance. Nor is this all. Suppose war should be declared between the United States and the country of his allegiance? He is then, by the law of nations, as well as by a law of Congress, an alien enemy. As an alien enemy he is liable to seizure, to have his goods confiscated, and he himself to imprisonment or deportation. No principle or practice that leads to such possible consequences is defensible either in law or morals. It is an anomaly of absurdities and irreconcilable contradictions.

An erroneous opinion once prevailed that the Fourteenth Amendment changed the whole status of the suffrage question; that it took from the State the power to fix the qualifications of electors, and vested it in the national government; and, worse than all, that it fastened upon us the pernicious doctrine of universal suffrage. There was never any real foundation for this opinion. The Fourteenth Amendment prohibits any State from making or enforcing any law abridging "the privileges and immunities of citizens of the United States." But the words "privileges and immunities" did not come into the Constitution with the Fourteenth Amendment. They had been there (in Article IV.) eighty years before that Amendment was ever dreamed of. And our national tribunals had uniformly held that the words do not relate to suffrage at all, but only to private rights; that suffrage is not a natural right inci-

dent to citizenship, but a gift conferred by the state. The clause does not therefore change this. It merely adds a guarantee for the protection of the citizen in the exercise of all his so-called private rights.

The only clause in the Fourteenth Amendment which bears upon the question of suffrage is the one in section two, which relates to the apportionment of representatives among the several States. The apportionment is to be based on population. This is mandatory. Then follows the contingent proposition that when "the right to vote" is denied by the State to resident male citizens of the United States over twenty-one years of age, except for "crime," the basis of representation shall be reduced in the proportion which the number of such citizens bears to the whole number of resident male citizens over twenty-one years of age. But the "right to vote," not being a natural right, can be conferred only by State laws. By expanding or restricting the suffrage, the State gains or loses in number of representatives. It is under no compulsion to do either; and it may eliminate the criminal element, no matter how numerous, without diminishing its representation. So that the qualification of electors still rests with the State, where it has always been.

Nor does Article XV. of the Constitution, usually cited as "the Fifteenth Amendment," materially change this. It declares merely that "the right of citizens of the United States to vote shall not be denied or abridged," by either State or nation, "on account of race, color, or previous condition of servitude." But here again the question arises, Whence comes this "right to vote"? And again the answer is, In the State, it can come only from State laws; in the Territory, it can come only from a law of Congress. Hence the obvious meaning is, that *when* the right to vote has been thus conferred, its exercise shall not be denied or abridged on account of racial conditions—it being still competent to the State (or to Congress, as the case may be), to declare that "when." In neither case is there any guarantee that the gift of the right to vote shall be conferred; or, when conferred, it shall not be withdrawn. The only guarantee is exemption from certain specified discriminations; and this, I apprehend, applies as well to any extension as to any restriction of the right of suffrage.

But to return to our constitutional definition of citizenship. Af-

ter all, it involves no new principle. In so far as it relates to citizenship by nativity, it is merely an affirmation of the old English common law, and of the law of nations. International law, quite apart from all local legislation, and quite apart from all treaty stipulations, recognizes as citizens or subjects all persons born within the domain and jurisdiction of the nation, including the children of alien friends. Such children, however, on becoming of age, may elect to remain citizens or to chose the nationality of their parents. International law also recognizes as native citizens, all persons born on board the vessels of the nation, or within the lines of its armies, or in the domiciles of its ambassadors and public ministers. For a citizen absent with his family on the public service of his country, still dependent upon it, and subject to its jurisdiction, can not be said to have quitted its territory; while by fiction of law, the deck of a nation's vessel is part of the territory of the nation.

Another test of nationality is that by the nationality of the father; or, as in the Latin-American States, by the nationality of the mother. The principle is the same in both cases. For, by the law of nature, children follow the condition of their parents and enter into all their rights. Hence the place of birth can not, in itself alone, produce any change in this particular, nor afford any valid reason for taking away from the child what nature has given it. Our statute of February 10, 1855, adopts this rule with a proviso that "the right of citizenship shall not descend to persons whose fathers never resided in the United States." But this, again, is but an affirmation of the old common law rule. All children born abroad inherit the nationality of their parents; but the right of such inheritance cannot descend to persons whose parents never resided in the country of their allegiance. Our government, however, has never insisted upon the allegiance of persons born abroad of American parents in countries whose laws make the place of birth the sole test of nationality—at least so long as they are domiciled in the country of their nativity. But when they take up their abode elsewhere, they are deemed American citizens as against the claims of all other governments.

It is manifest, however, that the adoption of this test of nationality by the nationality of the parent, logically requires a corresponding modification of the test by place of birth. Hence, in order to avoid possible conflict, our statute of April 9, 1868, usually cited

as "the Civil Rights Act," in declaring to be citizens "all persons born in the United States," adds the proviso that they be "not subject to any foreign power." Substantially the same rule now prevails in both England and France. The English law, like our own, lays chief stress on the place of birth; while in France, the nationality of the parent usually (though not always) determines the nationality of the child.

It is sometimes important to know when or under what circumstances a native-born citizen of the United States may be deemed to have expatriated himself; and it is more important still to be able to determine when or under what circumstances an adopted citizen of the United States may be deemed legally absolved from all obligations and penalties incurred by him under a former allegiance.

These questions are constantly coming up for discussion in the administration of our foreign affairs; but, beyond a few special treaties, and a few general principles of international law, bearing upon the subject, we have nothing to guide us to a satisfactory solution of them. We have no law providing for the expatriation of American citizens. Our so-called "Expatriation Act" of July 27, 1868, merely asserts the abstract "right" of expatriation. It does not go beyond this and say what acts or formalities shall be necessary to work expatriation, or what shall be the evidence of its accomplishment. And although the old feudal doctrine of indelible allegiance is now very generally abandoned, there still remain diverse theories of expatriation, some of which are very conflicting. Thus, for instance, while by our law expatriation is declared to be "a natural and inherent right," by the laws of some other countries it is regarded as crime, except when effected by special permission of the government. There are also as many as four general systems of naturalization, all of which are more or less conflicting; and in addition to these general systems, nearly every government has adopted exceptional methods of naturalization, some of which are likewise conflicting.

Some of these conflicting theories and methods have been reconciled by treaty; but there still remains sufficient diversity to cause much international friction. And it often happens that local legislation, instead of mitigating, merely aggravates these difficulties. Even some of our own statutes on the subject are open to this charge, and others of them are grossly inconsistent.

Take, for illustration, our series of naturalization acts. The whole question of expatriation and naturalization is, by the Constitution, one of exclusive cognizance by the national government. Yet, under our existing laws, any petty State or county court, or mere police magistrate, with "a clerk and a seal," having nominal common law jurisdiction, may, and does, admit aliens to the rights and privileges of American citizenship. And such a decree, being in the nature of a judicial act, cannot be revised or revoked even by the President or the Secretary of State. The result is that naturalization frauds, and international scandals growing out of them, have become the rule rather than the exception. To remedy this evil, the national tribunals should have as exclusive jurisdiction in all matters pertaining to the subject of naturalization, as is the power of Congress to legislate upon it. And, in any case, there ought to be established a central Bureau of Record of all decrees of naturalization issued by the various local or circuit courts.

But perhaps the greatest incongruity in local legislation on this subject is found in our so-called "Expatriation Act," already cited. After affirming that "the right of expatriation is a natural and inherent one of all people," the act proceeds to declare that "all naturalized citizens of the United States, while in foreign countries, are entitled to and shall receive from this government the same protection of person and property that is accorded to native-born citizens." Such declarations as these would be harmless at the hustings, where mob orators and demagogues are expected to talk at random; but they are beneath the dignity of a legislative body, and sadly out of place in the statute books.

In the first place, Congress has no authority to speak for the whole human race, for "all people"; its functions are limited to the people of the United States. Congress cannot abrogate or change the law of nations. Nor are foreign nations bound by any declaration that it may make further than they may agree to it by treaty, or further than the declaration itself may be in accordance with the law of nations; and in either case, the declaration would be superfluous. In the next place, the act fails to indicate how this "inherent right of all people" may be converted into a fact by American citizens; what shall constitute "expatriation," or what shall be the means and the evidences of its accomplishment. In the third place, the assertion that a naturalized citizen, while in foreign countries, is entitled to the same measure of protection as a

native-born citizen under like conditions, is in direct conflict with a well-settled principle of international law.

It is true that after naturalization, an emigrant is no longer an alien, but a full-fledged American citizen; and so long as he remains in the United States, he is entitled to, and should receive, the same measure of protection as to person and property that is accorded to a native-born citizen. But if he visits the country of his former allegiance, the protection to be accorded to him therein by our government becomes complicated with certain questions of natural rights which no civilized government can afford to disregard. His change of allegiance is not retroactive. It does not exempt him from obligations or penalties which he may have incurred *before* emigration. These remain; nor is it in the power of our Government to absolve him from them. So long as he remains within our domain and jurisdiction, it is discretionary with us to give him up for trial or screen him. But the moment he enters the domain and jurisdiction of the country of his former allegiance, where the obligation or penalty was incurred, that discretion ends. He must then take the consequences of his own acts. These principles are too well settled by the practice of nations, even when not specifically asserted by treaty (as is the case in many instances), to be any longer matters of dispute.

In effect, then, the high-sounding declarations in our so-called "Expatriation Act" are nothing more than gratuitous expressions of opinion. They are not binding even upon the President, who is charged by the Constitution with the administration of our foreign affairs, and who, in that capacity, is expected to conform to the settled principles of international law, and to our solemn treaty obligations.

The charge is sometimes made that our government fails to adequately protect its adopted citizens abroad. In a few exceptional cases, there may have been some foundation for this charge. But as a rule just the reverse is true. More frequently we interpose in behalf of those not entitled to our protection. The records of our State Department show that in nearly every instance where such a charge has been made the alleged victim was either a person of very doubtful nationality, or, if duly naturalized, that he had, before emigration, incurred obligations or penalties under a former allegiance that had not been discharged or satisfied. Yet it is precisely this class of persons who are the readiest to invoke the power of our govern-

ment, and who make loudest complaint if their selfish and unreasonable demands are not instantly complied with. And it too often happens that, by misrepresentation and falsehood, or by demagogic appeals through the public press, they succeed in placing our Government in an awkward and untenable position before the civilized world, or in raising a senseless clamor against it at home.

An adequate remedy for such scandalous abuses of American citizenship is not possible except by some well-digested scheme of legislation. There ought to be some clear and explicit declaration by Congress of the conditions under which an American citizen shall be deemed to have expatriated himself. And when a person presents himself at one of our legations or embassies, and demands protection as an adopted citizen, he should be required to produce some better evidence of his right to receive it than that afforded by a certificate of some obscure county or police magistrate.

The nationality of married women has been, and is still, another fruitful source of international controversy. We have no law defining the status of American women married to aliens; and in every country except where the old English common law prevails, the nationality of the wife merges into that of her husband. She loses her own nationality and gains his. Even in England this is now the law, the old common law rule having been superseded by the provisions of the naturalization act of 1870. But in the United States, the common law rule still prevails. An alien woman married to an American citizen acquires her husband's nationality and loses her own; while an American woman married to an alien, acquires her husband's nationality and retains her own. She thus owes a double allegiance, something incongruous with reason and abhorrent to modern international law; yet our law is powerless to relieve her of embarrassment in consequence of it.

If, therefore, it is desirable to appear consistent, and to place ourselves in harmony with the civilized world on this important matter, some legislation is necessary. There should be a statute making the nationality of the wife to follow that of her husband, and to change as he changes his. And if such a law, publicly proclaimed, would have the effect to make American heiresses a little more cautious about contracting matrimonial alliances with titled alien spendthrifts, perhaps that fact might be urged as an additional reason in its favor.

APPENDIX N.

THE DEVELOPMENT AND PRESENT STATUS OF THE LAW IN CUBA.

PAPER BY LUCIUS Q. C. LAMAR, COUNSEL TO THE UNITED STATES
MILITARY GOVERNMENT IN CUBA.

SUBJECT OUTLINED.

In tendering your kind invitation to me to deliver an address at the present annual meeting of this learned Association, your Executive Committee were thoughtful enough to suggest that, while the selection of a subject was left entirely to my discretion, anything pertaining to the legal phases of the Cuban question, the constitutional convention, or the American occupation of the island, would be listened to with interest. I have accordingly selected a subject relating generally to the development and present status of the law in Cuba, but I shall speak with particular reference to the new constitution of the republic, which it is expected will soon be promulgated and established.

In following out the line of my remarks, I shall not have occasion to deal with the historical developments of the early law in Spain, because, while such a study undoubtedly would be of interest to the legal antiquarian, it forms no necessary part of the present paper, and, even if I were qualified to make it, would probably be of little value and less interest at a time and place like the present. To the Spanish Monarchical Constitution, however, which was extended to Cuba, and to the civil and penal codes and laws of civil and criminal procedure and the code of commerce at present in force in Cuba, I shall refer somewhat at length. After a glance at the constitution by which Spain

vainly attempted in 1897 to establish self-government in Cuba, and at the modifications in the laws of Cuba effected by the United States Military Government in the island, I shall conclude by a consideration more or less in detail of the new constitution of the Republic of Cuba, including the appendix thereto of the Platt Rider or Senate amendment to the Army Appropriation Bill of our own Congress.

The topic cannot fail to be of importance, considered from any point of view, when it is remembered that the Cuban question is in many respects a question to be settled by the people of the United States, and that this constitution of the new-born Republic will soon be submitted to the President and Congress of the United States for consideration and approval by them.

SPANISH MONARCHICAL CONSTITUTION AND CODES.

In the early days the government of Cuba, in common with that of the other Spanish colonies, was conducted on the theory that newly discovered territory belonged to the crown, and that all political control was vested in the king, who appointed all the viceroys, captains-general and governors. When Cuba was colonized by Velasquez, this control was mainly exercised through the Council of the Indies. From that time to the year 1621, the laws of Spain applied equally to all her colonies, but thereafter they did not so apply unless express declaration was made to that effect. Special decrees and regulations modifying the application of the laws to the colonies, or promulgating new laws, were not infrequent, and a compilation of them in 1680 was published as the Laws of the Indies. This and the famous *Siete Partidas*, on which the laws of the Indies were largely based, comprised the Code under which the people of Cuba were formerly governed.

When the Americans assumed general jurisdiction over Cuba on January 1, 1899, they found in force in the Island, in addition to the Spanish Monarchical Constitution, five principal codes which constituted the main body of the Civil and Penal Law of the Island. These were the Penal Code, the Law of Civil

Procedure, the Code of Commerce, the Law of Criminal Procedure and the Civil Code. These important Spanish Codes had been extended during the last twenty-five years by royal decree to the Spanish Ultramarine possessions in substantially the same form in which they had existed in the Peninsula. In the last quarter of a century there has been much activity on the part of Spain in providing laws for Cuba.

The present constitution of the Spanish monarchy was decreed and sanctioned by Don Alfonso XII., in union and agreement with the Cortes of the kingdom on June 30, 1876. By this constitution it was ordained that the Spanish provinces beyond the sea should be governed by special laws, but the government was authorized to apply to the colonies laws theretofore or thereafter promulgated for the Peninsula, with such modifications as the government might judge convenient, at the same time informing the Cortes. Accordingly, three years later, by royal decree of May 23, 1879, the Penal Code of Spain was extended to Cuba. This Code is a volume about the size of the Penal Code of the State of New York, is divided into three parts, and contains in all six hundred and thirty-four articles. The first part contains general provisions regarding both crimes and misdemeanors, the persons liable and the penalties. The second part, the main body of the work, contains a full enumeration of the crimes punishable by law and their various penalties. The third part deals with misdemeanors as distinguished from crimes. The diversity of conditions between Spain and Cuba was the cause of the Penal Code suffering more alterations than the other Codes which were subsequently extended to the Island. The Penal Code of Cuba is a scientific codification of criminal law similar in many respects to the reformed penal codes in the United States.

The Spanish Monarchical Constitution itself was the next to be extended. This was done by royal decree of April 7, 1881. In passing it may be interesting to note that, while the constitution was extended to Cuba and Puerto Rico, it was not extended to the Philippines, that archipelago remaining directly and in-

mediately subject to the power of the king. Thus we see the doctrine of the constitution following the flag, or extending *ex proprio vigore* over colonial possessions, had no part in Spanish jurisprudence.

The present Code of Practice of Spain, or what is called in literal translation the Law of Civil Procedure, was extended to Cuba by royal decree September 25, 1885, after the General Codification Commission of the Spanish Colonial Department had concluded the study of the changes advisable to be effected in the Law of Civil Procedure in force in the Peninsula for its application to Cuba. This is an elaborate work, being the longest of the five principal Codes. It contains 2,143 articles, and is divided into three books. The first book contains provisions common to contentious and voluntary jurisdiction. The second book is devoted to contentious jurisdiction. The third book relates to voluntary jurisdiction. By contentious jurisdiction Spanish juriconsults understand that jurisdiction which is exercised when one party invokes the aid of the law against another party that disputes his demand, that is, where the parties are suing each other contradictorily. By voluntary jurisdiction is understood that which is exercised when a person having a right to resist a demand appears as a consenting party. Of the former class may be mentioned intestate and testamentary proceedings, insolvency proceedings and proceedings in bankruptcy. The latter class includes proceedings for adoption, appointment of tutors or guardians, probate of wills, and opening and administration of successions.

On January 28, 1886, the Code of Commerce, which had been adopted in Spain in 1829 and thereafter amended, was formally extended to Cuba. This Code contains four books, and its articles number in all, 955. The first book treats of merchants and commerce in general. The second book treats of special commercial contracts, including copartnerships, corporations, banks, railroad and insurance companies, negotiable instruments and the like. The third book is devoted to maritime commerce, the law of shipping, charter parties, loans on bot-

tomry and respondentia, marine insurance and average. Book fourth contains provisions in regard to suspensions of payments, bankruptcy, and prescriptions.

The next Spanish Code which was put in force in Cuba was the Law of Criminal Procedure, and this was effected by royal decree of October 18, 1888, with the modifications proposed by the Spanish Colonial Code Commission. The Law of Criminal Procedure is a Code of seven books and 998 articles, relating respectively to the general provisions of criminal procedure, the *sumario* or preliminary investigation similar in many respects to our grand jury proceedings, the oral trial, special proceedings against public officers and others, criminal appeals, proceedings in misdemeanor cases, and the execution of sentences. The Law of Criminal Procedure contains, among other things, a provision known as *careo*, whereby prisoners are personally confronted by the witnesses in the presence of the judge for the purposes of cross-examination. This is the Code, which, as it has been modified from time to time by the American Military Government, prescribes the procedure for the trial of the officers and employees accused of embezzlement of Cuban post-office funds.

The last of the five principal Spanish Codes in force in Cuba is by no means the least important, namely, the Civil Code, which is one of elementary law and not of practice. It was adopted in 1888 in Spain, and took effect July 31, 1889, in Cuba. It had been projected for about half a century, but its final adoption was delayed by controversies as to local rights and customs, and was only agreed to eventually by effecting a compromise recognizing some measure of home rule in certain of the provinces of the kingdom. The general plan of the work is not unlike that of the Code Napoleon and the other European Codes of similar character. The preliminary title treats of laws, their effect, and the general rules for their application. Following this the work is divided into four books, the first book relating to the Law of Persons; the second to the Law of Things, that is to say, property, ownership, and its modifications; the third book to the Different Methods of Acquiring Ownership; and the

fourth to Obligations and Contracts. I have never seen a Code of Law which in my judgment exhibited more precision of statement or better system of classification. This is the Code which the learned French jurisconsult Levé declared to be more scientific than the Code Napoleon.

Thus, we see, that in Cuba there are to-day, in addition to the Spanish Monarchical Constitution, so far as it is applicable, five interesting modern Codes of Law. There are also a few other important laws of a general nature, among others, the hypothecary or mortgage law, and the laws relating to the municipalities and provinces of the island, but lack of time will prevent any consideration of these.

SPANISH AUTONOMICAL CONSTITUTION.

The Spanish Autonomical Constitution of November 25, 1897, endeavoring to establish self-government in Cuba, was continued in existence about a year as a concession to the protests of the United States against the oppression of the Cuban people formerly practised by the Spanish rulers. That system of colonial self-government proposed by Sagasta and drafted by Moret, his home secretary, was a laborious but unsuccessful effort to apply to the Spanish Antilles the autonomy of Canada as it could be learned from the books. Its record is a record of failure, the system never having been accepted by the Cubans.

AMERICAN MILITARY GOVERNMENT.

By proclamation of January 1, 1899, the Military Governor, pursuant to authority vested in him by the President, declared that these Codes of Civil and Criminal Law should remain in force, but might be modified and changed from time to time when found necessary in the interest of good government. When the exercise of American authority began first in the province of Santiago, one of the earliest acts of sovereignty was the issuance of a Bill of Rights, based upon the guarantees of personal liberty contained in our own Federal Constitution. It may be interesting to note that by the seventh article of that bill it was declared that "The writ of *habeas corpus* should not

be suspended except when the commanding general deemed it advisable." But it is a fact that at that time the writ of *habeas corpus* was unknown to Spanish or Cuban law, and that the writ was not promulgated until more than two years later. There was, therefore, hardly any likelihood of the privileges of that beneficent writ being suspended when it had in fact no actual or legal existence.

To change the laws to which a people have been accustomed for a long series of years is under all circumstances a doubtful experiment. A disposition was at first shown by the American military government to go far beyond the bounds of prudence and reason in this respect. The English Common Law and its adaptation in the United States do not suit a people who are accustomed to the Roman law. It was an unwarranted assumption that the American military government, which was only "provisionally occupying" the Island of Cuba, was justified in rooting out the Latin law, notwithstanding that the people of Cuba had been accustomed to it nearly four hundred years. Owing to the determined opposition of the Cuban Bar Associations to radical changes in the existing laws, this misguided purpose was, fortunately, finally desisted from, and conservatism has now taken the place of enthusiasm. The bulk of the changes in the laws made by direction of the American military authorities are too transitory to require detailed analysis.

I agree with one of our own civil lawyers, eminent for his profound knowledge of the Roman system, "that the student of Spanish jurisprudence is impressed with the learning and juristic ability which it displays. There is no trouble in this respect. It is a noble system. But the contrast between the splendid science of the system and the moral quality of its administration in the former Spanish colony has been very pathetic. I imagine that no impartial Spaniard would deny that the administration of law in the colonies has been pervaded with corruption and abuse of every sort. The old question—*Quid leges sine moribus?*—of what use are statutes without morals?—must at once recur to the mind of the observer. No matter how refined

and scientific may be the codes of a nation, they are little worth unless in the mind of judges and advocates the rules of entire honesty and impartiality shall exercise a continual and controlling force."

CONSTITUTION OF THE REPUBLIC OF CUBA.

I arrive now at a consideration of the new constitution of the Republic of Cuba, which is to be submitted to the approval of the President and passed upon by the people of the United States through their representatives in Congress.

Of the constitution of the Revolutionary Government in the Philippine Islands, an eminent American authority has said, "There are not ten men on the planet who could have made one better." After a critical examination of both documents, I offer it as a modest opinion that the thirty-one delegates of the Cuban Constitutional Convention have done for Cuba what the learned senator from Massachusetts considered beyond the power of all but ten men on the planet to do for the Philippines. Indeed, I do not hesitate to say that in my judgment, in the matter of form at least, a minor matter, the new constitution of the Republic of Cuba unquestionably excels that of the United States. As to the practical working value of this fundamental law for the new republic no sound judgment, of course, can be formed until the new government is left to stand on its own support among the people of whose institutions it is to be a part.

I have here a copy of this fundamental law for the new republic. It is printed in Spanish and certified under the seal of the convention. It has not yet been officially submitted to the government of the United States, and, so far as I know, has never been translated into English. It is a pamphlet of thirty-one octavo pages, and is entitled, "The Constitution of the Republic of Cuba."

The preamble states: "We, the delegates of the people of Cuba, assembled in constitutional convention, in order to frame and adopt the fundamental law of their organization, as a sovereign and independent state, to establish a government capable of fulfilling its international obligations, to maintain order, secure

liberty and justice, and promote the general welfare, do agree to and adopt, invoking the favor of God, the following constitution." This preamble is important as showing the purpose and determination of the delegates to organize the people of Cuba into a sovereign and independent state, as distinguished from a protected or dependent state. Such was the wish and desire of the people of Cuba as it was duly and legally expressed by their representatives in assembly.

The constitution is next divided into fourteen titles and one hundred and fifteen articles. The first title treats of the nation, the form of government, and the national territory. The purpose and determination of the delegates to constitute the people of Cuba into a sovereign and independent state is here again expressed, so apparent was the desire of the convention to leave no room for question on this point. The same clause adopts the republican form of government. The territory of the republic is defined to be the Island of Cuba and also the adjacent islands and keys which with it were under the sovereignty of Spain until the ratification of the Treaty of Paris. This clause was carefully prepared and purposely inserted so as to avoid any question as to the legality of the title of Cuba to the Isle of Pines, and of this I shall have occasion to deal later. The present division of the territory of the republic into six provinces is retained.

The second title deals with Cubans. Cuban citizenship can be acquired, lost and recovered. It can be acquired only in the two usual ways, namely, by birth and naturalization. It is interesting to note that these provisions relating to Cuban citizenship were taken from the Spanish Monarchical Constitution and the Civil Code.

The third title relates to aliens or foreigners. The persons and property of foreigners are guaranteed the same protection as the persons and property of Cubans, and foreigners must contribute to the public expenses of the State, province and municipality.

When the Philadelphia convention was framing the Constitu-

tion of the United States in 1787, it might have been expected that they would have followed the example of the great charters of English liberty, and that in their completed work would have been found a full and clear enumeration of those rights which were deemed indefeasible, and which might lawfully be asserted against the government itself. The importance of this, however, did not impress itself on the minds of the members of that body. There was not in the Constitution any attempt at a systematic enumeration of fundamental rights, and the absence of this was made the ground of persistent opposition to the ratification of the Constitution. Some of the leading States were induced to ratify only in reliance upon a Bill of Rights being added to the Constitution, and this was done in the eight articles of amendment.

Of the importance of a full and complete enumeration of such rights the delegates to the Cuban constitutional convention were not unmindful. The fourth title of their constitution contains a long catalogue of the individual rights which it guarantees. All Cubans are equal before the law. The Republic does not recognize special charters (*fuceros*) or personal privileges. No law shall have retroactive effect, except penal laws when they are favorable to the delinquent or accused. This clause is taken from the Spanish Penal Code in force in Cuba, and affords an example of the precision of statement common to civil lawyers. The provision of the Constitution of the United States is that "No *ex post facto* law shall be passed." It required a decision of the Supreme Court to show that this was a prohibition of the passage of retroactive criminal laws as distinguished from civil laws, and the statement of the court in the same case that retroactive criminal laws may be passed provided they are favorable to the accused is a clear instance of judicial legislation.

The Cuban Bill of Rights guarantees that the obligations of civil contracts shall not be annulled or impaired by the legislative or executive power, and also that the death penalty shall never be imposed for crimes of a political character. The bill declares that no man shall be arrested except in cases and man-

ner provided by law, and then contains the following further guarantees of personal liberty:

“Every person arrested shall be put at liberty or delivered to the competent judge or court within twenty-four hours following the act of arrest. Every arrest shall be rendered without effect or enlarged to imprisonment within seventy-two hours after the prisoner has been delivered to the competent judge or court. During the same period the party interested shall be notified of the issuance of the interlocutory judgment. No one shall be imprisoned except by virtue of an order of a competent judge or court. The prisoner shall be heard, and the order on which the warrant has been issued shall be affirmed or set aside within seventy-two hours following the act of imprisonment. No one shall be indicted or sentenced except by a competent judge or court by virtue and in the form of laws enacted prior to the crime. Every person arrested or imprisoned without due process of law shall be put at liberty on the petition of himself or of any citizen.”

It may be surprising to some to learn that these elaborate guarantees of corporal liberty are copied literally from the Spanish Monarchical Constitution. In terms they afford a guarantee of protection of the liberty of the citizen against arbitrary arrests, and correspond to the right to *habeas corpus* in English and American constitutional laws. It does not speak ill for the Cuban lawyers that they have fully and unequivocally incorporated into the body of their constitution the right to this protection of the liberty of the citizen from arbitrary arrests, when our own constitution contains no express declaration of the right to the writ, but only the implied recognition in the provision that “The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.” When the promulgation of the writ of *habeas corpus* by the American military authorities was being considered, Cuban lawyers objected to this engrafting of exotic writs into their legal system, and contended that the remedies provided by the English writ were fully guaranteed by

the constitution and prescribed by the Code of Criminal Procedure. Finally, after two years and a half of delay, the writ was put in force by the American government, going into effect December 20, 1900. It is to be observed that there is no provision in the Cuban Constitution making it certain that it will be kept in force in the future.

One of the weaknesses of a written constitution is that it is likely to invade the domain of ordinary legislation instead of being restricted to fundamental rules, and thereby to invite demoralizing evasions. The provision of the Cuban Bill of Rights, that "No one is obliged to testify against himself, nor against his or her spouse, or his or her relations within the fourth degree of consanguinity or the second affinity," affords an instance of the constitution invading the domain of ordinary legislation, this provision being taken from the Code of Criminal Procedure in force in Cuba.

The secrecy of correspondence and other private documents, as well as a man's domicile are rendered inviolable, thus guaranteeing the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. The freedom of speech and of the press, and the right of the people peaceably to assemble and to petition the authorities shall not be abridged. Freedom is guaranteed to profess any religion and to exercise any form of worship without other limitation than respect to Christian morality and public order. The Church shall be separate from the State, and the State shall not be able to aid any religious establishment.

No Cuban may be expatriated, and none may be prohibited from entering the territory of the Republic. Primary instruction is obligatory. Nobody shall be deprived of his property except by competent authority and for cause justified by public utility, first rendering just compensation. Confiscation of property shall not be imposed in any case. Nobody is compelled to pay any tax or impost which has not been legally established, and the collection of which is not made as prescribed by law. The enumeration of rights expressly guaranteed by this constitution does

not exclude rights which may be derived from the principle of the sovereignty of the people and the republican form of government. Laws which regulate the exercise of the rights guaranteed by this constitution shall be void if they diminish, restrict or modify such rights.

Universal suffrage is guaranteed in the provision that all male Cubans twenty-one years of age have the right to vote, with the usual exceptions of persons mentally incapacitated and judicially disqualified for crime, and with the other exception of individuals belonging to the land and sea forces while in active service. This taking away the right to vote from soldiers and sailors in active service is novel, and finds no place, I believe, in the Constitution of the United States or the Constitution of the State of New York. There will be minority representation in all municipal, provincial, and State elections. These provisions give to freedmen and other colored persons the right to impartial consideration in the law of suffrage throughout the Republic. There was neither color line, nor property qualifications, nor educational requirements in the Cuban war for independence. There can be none in determining the future government of the republic.

As we have seen, the Constitution of the United States provides that the writ of *habeas corpus* may be suspended when in cases of rebellion or invasion the public safety may require it. Nothing is there said about the suspension of other constitutional guarantees of individual rights. The Cuban Constitution, following in this respect the constitution of Spain, authorizes the temporary suspension of the guarantees corresponding to the writ of *habeas corpus*, and some of the others which I have mentioned, when the security of the State may require it. The Cuban Constitution limits the power to suspend these guarantees within narrower bounds than do the legislative precedents in Great Britain and the Constitution of the United States.

The fifth title of the Cuban Constitution declares that sovereignty resides in the people of Cuba, and that from them all public powers are derived.

The constitution then adopts the usual and natural classification of governmental powers into legislative, executive, and judicial, and provides the checks and balances of government which are supposed to be essential to free institutions.

The sixth title relates to the legislative power, to the two legislative bodies, the Senate and House, and their respective composition and powers. The same title enumerates certain express powers conferred upon the congress, which are very similar to the specific enumeration of national powers in the Constitution of the United States. There is the power to pass laws, to provide revenue, to contract debts, to coin money, to regulate weights and measures, and to make rules for the regulation and increase of foreign and domestic commerce. There is also power as to post-offices and telegraphs, and power to lay and collect taxes, to regulate naturalization, to organize land and sea forces, to grant amnesties, to declare war and approve treaties of peace, and to provide for filling up vacancies in the presidency. The congress is expressly prohibited from tacking riders to appropriation bills.

The seventh title deals with the executive power, which is to be exercised by the president, and prescribes his duties and powers. In order to be president it is necessary that the candidate should be forty years old, in the full enjoyment of civil and political rights, and a Cuban by birth or naturalization; and, in case of naturalization, to have served Cuba with arms in her wars for independence at least ten years. This last clause was added in order to make it possible that Máximo Gómez, a native of Santo Domingo, might become president in case he should elect to become a Cuban by naturalization. The president is to be elected for four years, and nobody can be president three consecutive times. Nor can the president leave the territory of the republic without authorization by congress.

The eighth title makes provision for a vice-president of the republic, and the ninth title for the secretaries of the cabinet. The tenth title treats of the judicial power, and its exercise by a Supreme Court and such other courts as may be established by

law, and contains certain general provisions concerning the administration of justice, which shall be free throughout the territory of the republic. The eleventh title contains general provisions regarding the provincial system, and the twelfth title similar provisions regarding the municipal regimen. The thirteenth title declares that all property existing in the territory of the republic, which does not belong to the provinces, or the municipalities, belongs to the State, excepting private property. The fourteenth title provides that the constitution cannot be amended in whole or in part except by agreement of two-thirds of the total number of members of each house of congress. There is a schedule of seven temporary or transitory provisions which relate among other things to the steps necessary to put the new constitution into effect. The constitution was signed in the hall of the convention in Havana, on February 21, 1901, just six years lacking three days after the beginning of the last war for independence.

Gladstone said that the Constitution of the United States is the most admirable work which was ever created at any one time by the genius and will of man. These words have been frequently cited to express the idea that the Constitution of the United States as it left the hands of the Philadelphia Convention was something entirely new, an original creation. The Cuban Constitution, like the Constitution of the United States, is not the original work of a certain group of men, nor is it the fruit of any one epoch of time. It is both something more and something less than that. It will not be found left isolated in history without antecedents. Its titles contain, albeit in a new dress, many of the ancient principles to which long ages of constitutional struggles in England gave birth, and in order to determine and appreciate its creation it is necessary to consider the political development of many generations of men both in England and in the United States and in Spain.

PLATT AMENDMENT.

I conclude now with some brief remarks concerning the so-called Platt proviso or Senate Amendment to the Army Appro-

priation Bill of our own Congress, which has for its object a definition of the relations hereafter to exist between the government of Cuba and the government of the United States. I will not detain you by reading the whole of that amendment about which so much has been said and written of late, for the substance of its provision must be remembered by you all. In dealing with this part of my subject I shall endeavor to state as nearly as I can the attitude and views of the people of Cuba in that matter as expressed by their representatives in the Constitutional Convention.

In their opinion as to the nature, character and extent of the relations which should exist between the government of Cuba and the government of the United States, the Cubans stood upon the joint resolution of our Congress declaring war with Spain, upon the Treaty of Paris, upon the only decision of our Supreme Court directly affecting Cuba, and upon the provisions of their own constitution.

The Cubans kept in mind that the joint resolution of April 20, 1898, provided that the people of the Island of Cuba are, and of right ought to be, free and independent, and that the United States thereby disclaimed any disposition or intention to exercise sovereignty, jurisdiction or control over the said Island, except for the pacification thereof, and asserted its determination when that was accomplished to leave the government and control of the Island to its people.

They also remembered that by the Treaty of Paris it was provided that the United States would assume and discharge the obligations that might, under international law, result from the fact of its occupation, for the protection of life and property, "so long as such occupation should last"; and that any obligations assumed in that Treaty by the United States with respect to Cuba were expressly limited to the time of its occupation thereof.

In the only decision of the Supreme Court of the United States directly affecting Cuba it was held that the Act of April 20, 1898, declaring war between this country and Spain, was

not passed for the purpose of making Cuba an integral part of the United States, but only for the purpose of compelling the relinquishment by Spain of its authority and government in that Island, and the withdrawal of its forces from Cuba and Cuban waters. Up to the time of that decision in January of this year, and before the passage and approval of the so-called Platt Amendment, it is true, that the Supreme Court was of the opinion that all that had been done in relation to Cuba had had that end in view; and so far as that court was then informed by the public history of the relations of this country with that Island, nothing had been done up to that time inconsistent with the declared object of the war with Spain. In that case the Supreme Court decided that Cuba is none the less foreign territory, within the meaning of the Act of Congress, because it is under a military government, appointed by and representing the President in the work of assisting the inhabitants of that Island to establish a government of their own, "under which, as a free and independent people, they may control their own affairs without interference by other nations." Perhaps the occupancy of the Island by troops of the United States was a necessary result of the war. Perhaps that result could not have been avoided by the United States consistently with the principles of international law or with its obligations to the people of Cuba. Perhaps it is true, as the Supreme Court says, that, as between Spain and the United States—indeed, as between the United States and all foreign nations—Cuba, upon the cessation of hostilities with Spain and after the Treaty of Paris, was to be treated as if it were conquered territory. But, as the Supreme Court expressly held, as between the United States and Cuba, that Island is "held in trust for the inhabitants of Cuba, to whom it rightly belongs, and to whose exclusive control it will be surrendered when a stable government shall have been established by their voluntary action."

Before the passage of the Platt Amendment the delegates to the constitutional convention declared in the preamble and again in the first article of their constitution that they had "as-

sembled in order to frame and adopt the fundamental law of their organization as a sovereign and independent State."

The independence of Cuba was the thing upon which we relied for our justification when we went to war with Spain. We made a solemn proclamation that, having secured that independence, we would depart and leave Cuba free to frame a government for herself and in her own way. In due time Cuba proceeded to frame a government for herself in and by the constitution which I have read to you. But, before that work was completed, and after we had stated to her in words that could not be misunderstood that she need not as a part of her constitution provide for or agree with the government of the United States upon the relations to exist between the two countries, we proposed, in violation of the rules of the Senate, a rider to a pending appropriation bill, in the closing hours of the last session of Congress, ordering the Cuban Constitutional Convention to make the articles of that rider a part of their fundamental law, as an absolute condition upon the withdrawal of our armed control and leaving the government of the Island to its own people. The Cubans considered every one of those provisions an infringement upon the sovereignty and independence of the Island, and an imposition of conditions that our government could not impose upon our own States, and that they were imposed under duress upon what our own Supreme Court had expressly declared to be a foreign country held by us in trust.

The Cubans objected to the Platt Amendment because in their opinion under it the people of Cuba will not be free and independent; and because, the Island having been long since "pacified," the United States, in violation of the joint resolution now show a disposition to exercise sovereignty and jurisdiction and control over the Island, and an intention not to leave the government and control of the Island exclusively to its people. They objected to the amendment because it compels the government of Cuba to consent that the United States may intervene hereafter in Cuba for discharging obligations with respect to Cuba imposed by the Treaty of Paris on the United

States, notwithstanding by the terms of that Treaty those obligations were expressly limited to the time of its occupancy of their Island. They objected to the amendment because the highest judicial body of the United States declared in terms sufficiently clear that the President was lawfully exercising jurisdiction in Cuba only for the purpose of assisting the inhabitants of that Island to establish a government of their own, "under which as a free and independent people they might control their own affairs without interference by other nations"; and because the same great court expressly held that Cuba was foreign territory, and that, as between the United States and Cuba, that Island is held in trust for the inhabitants thereof, "to whom it rightfully belongs, and to whose exclusive control it will be surrendered when a stable government shall have been established by their voluntary action." They objected to the amendment because by the terms of their constitution they had "assembled in constitutional convention in order to frame and adopt the fundamental law of their organization as a free and independent state." They objected to the amendment because it was suggested by the executive authorities, and introduced as a rider to an army appropriation bill, in violation of the rules of the Senate of the United States, and passed, hastily, without due consideration, after two hours of debate, and, as the distinguished senator from Alabama acknowledged on the floor of the Senate, without the Congress ever having seen or read the Cuban Constitution of which the amendment was to be made a part. They objected to the amendment because the convention was called to frame and adopt a constitution for the people of Cuba, and was expressly relieved from making provisions and agreements with the government of the United States upon future relations a part of their constitution; and because they could not exercise legislative or treaty-making powers, but in their functions were limited to the purpose expressed in the order calling the convention. And, finally, they objected to the amendment because it had the effect to compel them to change their constitution by omitting the Isle of Pines from the constitutional boundaries of Cuba, and to

leave to future adjustment by treaty the title to that island which has been a part of their territory recognized by Spaniards and Americans alike for nearly four hundred years.

"And so," as a careful American writer has lately said, "the resolutions of 1898 seem very far away in the dim past, although they are only three years old. The solemn promise given in them has been broken and the cynics of the Old World jeer at us when they talk or write about it. The breaking of it was begun when a weary Congress, to avoid an extra session, gave to the President in the Platt Amendment the instructions suggested by himself. It would not have been completed if our government had accepted from the Cuban convention what was substantially a full compliance with the conditions imposed, although the action of the consenting majority was not wholly free from indications of duress. But the promise was repudiated when our government said: 'You shall have no government of your own until you have undertaken to give us these naval stations and the right to intervene, in the exact words of our demand, without adding an appendix or foot-note containing any statement of our own as to the unselfish and benevolent character of our designs.' The Cubans have thus far yielded under such coercion, but the stain upon the honor of the United States cannot be effaced by their unwilling submission. It can be wiped out only by the repeal of the Platt Amendment, followed by an expression of the purpose of the United States to take from the Cuban people only such privileges or concessions as they will freely grant, either without compensation or in honorable exchange for something which they desire."

APPENDIX O.

REPORT OF THE COMMITTEE ON MEMORIALS.

(A)

BRANTLEY A. DENMARK.

Brantley A. Denmark died after a short illness at his home in Savannah, Georgia, June 13, 1901. He was a prominent lawyer, an active business man, and a leader in educational matters. Clients, associates, and the community at large in which he lived, will greatly miss him.

Born in Brooks county, Georgia, on April 25, 1850, his early years were spent on a large plantation. In 1871 he was graduated from the State University with honors. Having studied law with Hon. Henry G. Turner and having been admitted to the bar in 1872, he located in Savannah, entering the firm of Hartridge & Chisholm.

A man of ability, integrity, discriminating judgment and directness of purpose, he was most successful in the varied pursuits in which he was interested.

For some years previous to his death he was the counsellor rather than the advocate. Men of large interests sought his advice and found him possessed of practical wisdom and an accurate knowledge of the law affecting mercantile and corporate transactions.

As president, for twelve years, of the Citizens' Bank of Savannah, he was a power in banking circles. The bankers who met to do him honor said that "in time of financial peril he was imbued with a calm courage nothing could disturb; that to him, in large measure, was due the fact that in a comparatively recent panic the banks of the city passed safely through the try-

ing ordeal without withholding from commerce the financial aid necessary to prevent disaster." His enthusiasm in educational matters was manifested in many ways, most notably in his effort for the collection of an endowment fund for his Alma Mater, the State University. The committee of which he was the efficient chairman raised more than \$50,000, of which he, unaided, raised in Savannah \$10,000.

President and vice-president of two railroads, a trustee of the State University, member of the Chatham Board of Education, president of the Citizens' Bank, director of the Telfair Academy of Arts and Sciences, officer and director of a score or more of corporations in Savannah and throughout the State, executor of many of the city's wealthiest estates, his life was full of work and good deeds, and his death was a great loss to all within the wide scope of his helpful and elevating influence.

(B)

JOHN P. SHANNON.

John P. Shannon was born at Augusta, Georgia, August 4, 1850, and died at his home in Elberton, Georgia, August 16, 1900. His father, Peter Shannon, moved with his family when John was only about two years old, from Augusta to Elberton, and there the subject of this sketch resided continuously until his death.

He was admitted to the bar of the Superior Court of Elbert county, August 14, 1869, and as a member of the bar of the Supreme Court of the State, December 20, 1881. He achieved success and distinction at the bar, and in 1896 was a prominent candidate for judge of the Supreme Court of the State. In early manhood he became a member of the Masonic Fraternity, and after serving for many years as Worshipful Master of the lodge at Elberton, he became Grand Master for the State October 31, 1894, winning the highest honor which that ancient and historic order could bestow. He filled acceptably that

highly honorable position and was reelected in 1895. On June 14, 1899, he was elected Supreme Dictator of the Knights of Honor, was reelected to that office in 1900 and held the same at the time of his death. In 1892 he was Presidential Elector on the democratic ticket, and was chairman of the Democratic Congressional Committee for many years. He was a member of the Board of Trustees of the Methodist Church of which he was a member and a teacher in its Sunday-school.

Possessed of a fascinating personality, a sympathetic nature and a captivating oratory, he wielded in every sphere of his activity a wholesome and delightful influence. That he won the respect and friendship of the people in whose midst he lived was manifested by the large attendance from the immediate community and of distinguished men from different sections of the State at his funeral, which occurred at Elberton on Monday, August 17, 1900. The storm that wrecked his earthly tenement came on Sunday, a blessed day for a blissful transit from time to eternity, from earth to heaven.

APPENDIX P.

PLEADING.

PAPER BY SYLVANUS MORRIS, DEAN OF THE LAW DEPARTMENT,
UNIVERSITY OF GEORGIA.

In administering justice between litigants there are two successive objects: first, to ascertain the subjects for decision; and second, to decide. The first of these objects is the province of pleading—to attain it there is but one method of proceeding, to wit: to make each party state his own case, and to collect from the opposition of their statements the points of legal controversy. Hence,

1. Pleadings are defined to be the mutual altercations in writing between the parties, delivered into office.

2. The object in pleading is to ascertain the issues to be decided. Common law pleading goes a step further and imperatively requires that the issue, when ascertained, shall be single.

At common law each injury or wrong had an appropriate writ, upon which was founded the declaration, for its redress. This special pleading has long been abolished or abandoned, and forms of actions, each covering a variety of cases, have as long been in use. In Code States all forms of action have been reduced to one simple pattern. The entire system of common law pleading has been uprooted and a substitute made therefor. In Georgia, as in other States, the rules of pleading have taken the same direction as other rules of the common law. There have been successive modifications by code and statute, so that Georgia pleading has grown into its present shape by the same process as other parts of the law; *e. g.*, the rules of law regulating common carriers, of married women's property.

Taking it for granted that all of you are thoroughly conversant with the science of common law pleading, we shall here note briefly only those salient characteristics of that system which will accentuate by comparison the features of Georgia pleading.

COMMON LAW.

I. Several classes of actions, to wit:

1. Real. 2. Personal. 3. Mixed.

These distinctions, founded upon the subject-matter of the suit, became unimportant when real actions became obsolete, and only one mixed action, to wit: Ejectment, survived to do the duties of all real and mixed actions.

II. Several forms of actions, to wit:

1. Debt. 2. Covenant. 3. General Assumpsit. 4. Special Assumpsit. 5. Detinue. 6. Replevin. 7. Trover. 8. Trespass. 9. Case. 10. Ejectment.

The choice of the form of action is determined in each case by the nature of the contract, the manner of the injury, the character of the possession of the chattels, or the title, in case of land.

III. Demurrers. 1. General. 2. Special.

A demurrer admits the facts and denies the right to recover under the law, it is then general; or denies the right to recover in the form in which the suit is brought, or under the allegations in the pleadings, it is then special. It makes an issue of law, which at common law finally determined the cause.

IV. Pleas. 1. Dilatory. 1st. Jurisdiction. 2d. Suspension. 3d. Abatement.

These preliminary defenses do not bring the cause to trial upon the merits, but if successful may delay the trial upon the merits, by dismissing, suspending, or destroying the particular action.

2. Peremptory. 1st. Traverse, General or Specific. 2d. Confession and Avoidance.

These are the defenses upon the merits.

V. The object is to bring the litigants to a single material issue.

1. This object is attained mainly by requiring the parties to plead alternately. At each stage the party pleading must demur or plead by way of traverse or of confession and avoidance; each pleading narrows the subject until one side makes a traverse, or denial, of the last opposing pleading. This traverse "tenders issue," and this issue the other side must accept and the case is ready for trial on the pleadings. The names of the several pleadings and the order in which they come is as follows:

PLAINTIFF.**DEFENDANT.**

1st. Declaration.

2d. Plea.

3d. Replication.

4th. Rejoinder.

5th. Surrejoinder.

6th. Rebutter.

7th. Surrebutter.

2. The further means of bringing the cause to a single issue is by the application of certain rules, which, with the vices they are designed to prevent, may be grouped as follows:

Rules to produce:

1st. The Issue.

The violation of this rule is a bad tender of issue, or defective pleading when the party's time to plead comes.

2d. Materiality of the Issue.

The common violation of this rule is Variance.

3d. Singleness of the Issue.

This rule is directed chiefly against Duplicity and Misjoinder.

4th. Certainty of the Issue.

The certainty required was one of the three recognized degrees dependent upon the particular pleading. (a) To a common intent. (b) To a certain intent in general. (c) To a certain intent in every particular.

3. To the rules designed to produce a certain, single, material issue, are added others which serve as guides in framing any and all pleadings, and are classified as follows:

1st. Rule to produce consistency and simplicity.

These rules forbid Insensibility, Repugnancy, Ambiguity, Argumentativeness.

2d. Rules to produce Directness.

These rules are most frequently violated through the faults of Departure and Surplusage.

CODE PLEADING.

The rules of Code Pleading may be briefly stated:

I. Forms are abolished: uniform procedure is adopted.

II. The pleadings are Petition, Answer, and sometimes Reply. The cause is "at issue" on these.

III. The facts constituting the plaintiff's demand and the defendant's answer are plainly set out in ordinary language without repetition.

The special demurrer is abolished. The parties may demur only in specified cases.

GEORGIA PLEADING.

Rule I. Distinctions of Actions Abolished.

Distinctions of actions into equitable and legal, of the latter into real, personal and mixed, as well as the separate forms of personal actions are abolished. Whether against person or property, or for legal or equitable cause, or both, the uniform method of bringing an action is by petition, and of defending is by answer. Code, §§4931, 4960, 5052, 4833.

Rule II. Petition and Plea to the Merits.

The petition shall plainly, fully, and distinctly, in orderly and distinct paragraphs, numbered consecutively, set forth the ground of complaint and demand, and the names of the persons against whom process is prayed. The plea shall distinctly answer each paragraph of the petition, where the defense is satisfaction, avoidance or specific traverse; and may in a single paragraph deny or admit any or all of the allegations of the petition.

Code, §§4960, 4961, 5051, 5053.

1. Common law declarations and pleas, properly paragraphed, may be used for the petition and answer. Shorter forms of petitions, properly paragraphed, may be used. The former is modified pleading proper, the latter is practically Code pleading.

Technically, Georgia is not a code State; practically, the Georgia system is code pleading.

Code 1895, *ut supra*. Code 1882, §3389 *et seq*.

2. Copies of contracts declared on (except insurance policies) should be incorporated in or attached to the petition. A bill of particulars should be attached to the petition in a suit on account, and an abstract of title in an action for the recovery of land.

Code, §4963. S. C. Rule 11.

3. The sufficiency of all petitions and pleas shall be determined by the court at the first term on the call of the appearance docket. All curable defects must be supplied by amendment made *instantly*, or within such reasonable time as the court may, in his discretion, allow for making and filing such amendment.

Code, §§5047, 5046-5.

4. A verified petition requires a verified answer.

Code, §5055.

5. Any averment distinctly and plainly made in the petition, which is not denied in the defendant's answer, shall be taken as *prima facie* true, unless the defendant, because of want of sufficient information, reserves the right to deny.

Code, §4961.

6. At the call of the appearance docket (on the last day of the term, or on some day previously fixed), all cases not defended, except divorce cases, are in default, and at the trial term the plaintiff may take a verdict or judgment without more.

Code, §§5069, 5071, 5074.

Rule III. Issue.

The petition and answer shall be sufficient to carry the cause to the jury, without any replication, unless the court requires the plaintiff to meet, by appropriate written pleadings, new matter set up by the defendant, not controverting the petition. The answer may contain as many several matters as the defendant may think necessary for his defense, and no part of it shall be

rejected on account of being contradictory to another part of the same. Subsequent pleadings are by amendments.

Code, §§5067, 5050, 5052, 5065.

1. Defenses should be filed and determined at the first term, unless continued by the court, or consent of parties, in the following order: 1. Demurrers. 2. Dilatory Pleas. 3. Particular Pleas. 4. Pleas to the Merits.

Code, §§5047, 5046.

Rule IV. Demurrer.

Demurrer admits the truth of all properly pleaded allegations in the opposing pleading, raises an issue of law to be decided by the court, denies the right to the relief sought, in part or in whole, for want of jurisdiction, or of right in the petitioner, or for nonjoinder or misjoinder of parties or of causes of action, or for absence of liability by the defendant to the petitioner. It may be taken to the petition or to the answer. It shall be filed and decided at the first term. All defects which appear on the face of the pleadings may be taken advantage of by motion.

Code, §§5048, 5049, 5050, 5045, 5046.

1. The distinction between general and special demurrers is abolished, and in all cases the demurrer shall be special, whether the ground is substantial or formal.

2. The effect of the demurrer at common law was usually to end the case; in Georgia, the pleader may demur, and if overruled, may plead over; or if the demurrer is sustained, the other party may amend to meet the objection presented by the demurrer.

Rule V. Dilatory Pleas.

Dilatory pleas must be verified and filed at the first term. Plea to the jurisdiction must be specially pleaded and in person (unless want of jurisdiction appears on the face of the pleadings, when it may be taken advantage of by motion), and such plea must disclose the true residence of the defendant, if within the jurisdictional limits of the State. The plea of infancy is a

personal privilege, and is good in abatement when personally claimed. Former recovery or pendency of another suit for the same cause of action between the same parties is a good plea in abatement.

Code, §§5058, 3649, 5094, 5095.

Rule VI. Particular Pleas.

The plea of *non est factum* must be verified, and can be filed only when the execution of the instrument sued on is alleged to be the act of the party pleading or adopted by him. The plea of *nul tiel record* is available only when the record is the foundation of the action, not when it is mere inducement. Debts mutual between the parties at the commencement of the suit may be pleaded as set-off. Such plea must set out the demand as plainly as if sued on. In a suit on a contract, the defendant (if a party or privy thereto, or an assignee without notice), may plead and prove a total or partial failure of the consideration upon which the contract was founded. The plea of usury must set forth the date and maturity of the contract, the principal sum and the amount of the usury.

Code, §§5066, 5092, 5093, 5084 *et seq.* 5091, 5090, S. C. Rule 11.

1. A trespasser cannot set-off improvements against mesne profits, unless the improvements enhance the value of the premises. In no case shall the set-off reduce the profits below the sum which the premises would have been worth without the improvements.

Code, §5078.

Rule VII. Pleas to the Merits.

Peremptory pleas of traverse or of confession and avoidance shall be framed as explained in Rule II. All pleas must be filed and determined at the first term, unless continued by the court or consent of parties. All defects must be cured by amendment at the call of the appearance docket, or within such time as the court, in his discretion, may allow for amendment.

Code, §§5047, 5046.

Rule VIII. Equitable Petitions and Answers.

Petitions seeking equitable remedies and answers setting up equitable defenses shall be set forth in orderly and distinct paragraphs, numbered consecutively, using the terminology and nomenclature, and conforming to the requirements of common law petitions and answers; and shall contain the averments formerly necessary in bills and answers in equity. Either plaintiff or defendant may avail himself of any equitable relief to which he may be entitled either in a separate suit for that purpose, or in connection with a common law suit, provided he claim it by appropriate and sufficient pleadings. Exhibits must be attached when required. The petition seeking extraordinary remedies must be verified. The answer must be verified unless it is waived. The answer is not responsive unless the petition expressly prays discovery.

Code, §§4833 *et seq.*—4937, 4960.

1. For amendments to equitable pleadings, see Rule IX.

Rule IX. Amendments.

Pleadings may be amended either in form or substance, provided there be enough in the pleadings to amend by, and provided the amendment does not add a new and distinct cause of action, or new and distinct parties. The amendment must be made at the call of the appearance docket, unless further time be specially granted by the court. Amendment to answer shall not set up a new defense after the time for answer has expired, unless an affidavit accompany it to the effect that at the time of filing the answer, the defendant did not omit the facts now pleaded for the purpose of delay, and the amendment is not offered for delay. The court may allow the amendment without the affidavit. Misnomers may be corrected, names of partners added, misjoined plaintiffs or defendants stricken, use plaintiffs added, and the representative character of parties changed instantaneously on motion. Either party on an equitable proceeding may amend at any time in matter of form or substance, and may add necessary parties.

Code, §§5097, 5098, 5099, 5044, 5057.

Acts '97, p. 35. 5102, 5103, 5104, 5105, 5106, 4835, 4838.

Rule X. Statutory Proceedings.

In the foreclosure of liens and mortgages; ejection of tenants and intruders; attachments, garnishments, claims, illegalities, possessory and distress warrants; prohibition, *mandamus*, *quo warranto*, *habeas corpus*, alimony; establishment of lost papers; rules against officers; petitions to the judge at chambers, and other special cases of like nature, the proceedings and pleading shall in each case conform to the requirements of the statute providing and regulating the same.

Code, §4972.

Georgia pleading is, as previously stated, practically code pleading. The chief advantage of the system over the common law is in simplification and in getting rid of a large number of mere forms which had become useless, because they had survived the concepts on which they were founded. Whether these advantages, in the present state of the matter, outweigh the disadvantages, is at least questionable.

The authors of these changes require a mere statement of the facts on either side couched in colloquial language, without the use of any other terms than such as would be employed in the description of the same facts for any other purpose. If it was their design to have such statements perform the office of pleadings, they attempted an impossibility.

The functions of pleadings are:

1. To furnish a standard for the admissibility of evidence.
2. To form a basis to which the law can be applied on the trial.
3. To be a record of *res adjudicata*.
4. To give notice to third persons of their rights affected by the suit. *Lis pendens*.

The first two are indispensable. Let us see if these colloquial statements fulfill these requisites. With the old actions have passed away the forms and precedents of pleading. Fifty years is a brief time in which to change the results of six centuries. These old precedents had stood since the time of Edward I. and at that time had almost created the English law of personal prop-

erty, contracts and torts. In all these fields, if we trace the substantive law to its sources, we find most of its rules begin as rules of practice in the appropriate action.

We must remember that the effects produced upon the law by six centuries of practice under these forms still remain in the concepts as "ultimate facts" formed by them, of which most of our legal language is still composed. In whatever words a cause of action may be stated, the case cannot be argued or decided until it has been reduced to these "ultimate facts." Rules of law cannot be applied to mere evidence or to facts stated in common colloquial terms, that have no definite meaning.

The concept of a pleading as being the statement of "ultimate facts," constituting a cause of action or grounds of defense, is peculiar to the English system of law, the Anglican method of administering justice. These "ultimate facts" are not a brief of evidence; are not statements of propositions of law, but are the legal effects logically resulting from the application of *the law to the facts*. The legal proposition being the major premise, the facts of the case the minor premise, the pleading is the logical conclusion of the syllogism.

This is due to and necessarily results from the fact that our system is unique, in that questions of law are decided by the judge, who is a lawyer, or by a bench of lawyers, and matters of fact are determined by laymen composing the jury. We find nothing exactly parallel therewith in Hebrew, Oriental, or Civil law.

Hence, nothing is pleading to which the law cannot be applied on the trial, which is not a guide for the introduction of evidence to support it.

The question whether an action lies on a given state of facts can only be solved by determining whether any of the private wrongs enumerated by Blackstone have been committed, because we have no other concept of a legal wrong than those shapen in these forms of action.

In time there will arise new concepts of an "actionable wrong," in the abstract, or of its elements, such as "injury," "damage," which will be clear and exact, and be as universally

accepted as "trespass" or "conversion." But it will be generations before this is so complete that we can reason safely without invoking the earlier generalizations. Hence the importance of understanding at least the common law terms, even where the new practice has superseded the old. It is by the force given these terms to-day that we determine which of the rules of detinue or trover, of covenant or assumpsit, of trespass or case, have been abolished along with these actions and which of them are still to be held for substantive law.

It would be easy to multiply examples, showing that the substantive law has been created by the pleader. In criminal law the definitions of what we call common law crimes come to us not from ancient legislative enactment, but as crystallizations from successive indictments, charging the "ultimate facts" constituting the crime. We need only to turn to the Code and read the definition of simple larceny, fifteen words long, admitting no doubt as to meaning, and then read the definitions of larceny after a trust delegated, covering several pages, to emphasize the difference between structure resulting from ages of evolutionary growth and direct legislative creation.

Again, even in strict Code States there exist indispensable rules regulating the joinder of actions, marking off some six or seven kinds that may not be united. This proves, at least, that the diverse forms of actions were founded in difference of subject-matter, and were not mere pleader's distinctions, and is a confession that a single formula will never serve alike for the enforcement of all legal rights.¹ So long as the legal conceptions of contracts and torts, for instance, differ as they now do, just so long will they require separate forms of actions. The abolishing of old forms does not do away with forms, but it at least leaves a clear field for the construction of new ones.

Thus we see that the fundamental principles of the science of pleading are still all-important in the administration of justice under the modern system. Those principles must also govern in the development of new forms and rules adapted to the present state of the substantive law.

¹ Standard works on Code Pleading now contain nearly five hundred forms of petitions alone.

COMMON LAW PLEADING CHART.

PLEADINGS, IN AN ACTION.		DEFENDANT.	
PLAINTIFF.			PLEAS.
DECLARATIONS.			
EX CONTRACTU.	<ul style="list-style-type: none"> 1. Debt. 2. Covenant. 3. Account. 4. Special Assumpsit. 5. General Assumpsit. 		<ul style="list-style-type: none"> JURISDICTION. SUSPENSION. ABATEMENT.
EX DELICTO.	<ul style="list-style-type: none"> 1. Trespass. 2. Trover. 3. Case. 4. Detinue. 5. Replevin. 		<ul style="list-style-type: none"> Residence of Defendant. Power of the Court. Disability of Parties. Misjoinder—Nonjoinder. Pendency of Another Suit. Misnomer. Estoppel.
MIXED.	EJECTMENT.		<ul style="list-style-type: none"> General. General Issue. Traverse. Replicatio de Injuria. Common—Specific Traverse. Special Traverse.
			<ul style="list-style-type: none"> Justification. Excuse.
			<ul style="list-style-type: none"> PEREMPTORY. CONFESSION AND AVOIDANCE. Discharge. Payment. Release. Tender. Set Off. Statute Bar.
		DE MURREER.	
		GENERAL.	
		SPECIAL.	

COMPARATIVE CHART OF PLEADING.

COMMON LAW.	MODIFIED.
<ol style="list-style-type: none"> 1. Actions Classified, Special Form for each Action. 2. Declaration, Plea, Replication, Rejoinder, Surrejoinder, Rebutter, Surrebutter. 3. Single Issue. 4. Demurrer, Dilatory Pleas. 5. Peremptory Pleas. <ol style="list-style-type: none"> 1st Traverse—General and Specific. 2d. Confession and Avoidance. <ol style="list-style-type: none"> —(a) Justification. (b) Excuse. (c) Discharge. 	<ol style="list-style-type: none"> 1. Special Pleading Abolished. 2. Petition and Answer. Amendments. 3. Several Issues. Contradictory Pleas. 4. Uniform Procedure. Personal. Real. Mixed. Contract. Tort. Equity. 5. Demurrer. Dilatory Pleas. 6. Particular Pleas. General Issue. Special Traverse. Confession and Avoidance.
CODE.	FUNCTIONS OF PLEADING.
<ol style="list-style-type: none"> 1. Forms Abolished. Uniform Procedure. 2. Petition and Answer, and sometimes Reply. 3. Facts stated in ordinary language. 4. Demurrer in Specified Cases. 	<ol style="list-style-type: none"> 1. Standard for the admissibility of evidence. 2. Basis to which the law can be applied on the trial 3. Record of Res Adjudicata. 4. Notice to third persons of rights affected (<i>Lis Pendens</i>).

APPENDIX Q.

A LAWYERLESS COURT.

PAPER BY WALTER G. CHARLTON, OF SAVANNAH.

The delightful and helpful relations existing between the bench and bar in our day contribute so much to the charm of professional life, that it may not be uninteresting to turn for a moment from the serious and weighty matters of jurisprudence to recall the time when the good people of Georgia considered it necessary to quarantine their court against lawyers. The movement was a success in that the bench escaped the infection of law for many years. The more we study the career of Oglethorpe, the more we are impressed with the broad greatness of his spirit and the long reach of his practical and businesslike intellect. The military dispositions he made are above criticism, and his skill in dealing with the Indians suggests the highest practice of statesmanship. If courts, as we understand them, occurred to him and the trustees as expected adjuncts to a theoretical government, their practical philanthropy doubtless took into account the tender sensibilities of many of the colonists, fresh from the debtor's prisons of England, in whose presence it might be indelicate to insist on the law and to whose hearing the machinery of the law would hum with positive cruelty. They had had enough of law and lawyers, and our distinguished predecessor in citizenship as, like Tityrus of old, he reclined at length beneath the grateful shade of the straight-stemmed pine, listening to the sea-sprites crooning in their swaying tops, doubtless felt that the shifting melodies of the mocking-bird were more in accord with his present fancy than the alluring eloquence of the barrister or the artful wooing of the special pleader. Hav-

ing been all things to all men in all times the lawyer had come to be in the wilds of Georgia a plain and transparent Grecian horse, his thick sides swelling with painful possibilities for the peaceful Troy before whose gates he had been opportunely stayed. And thus it was solemnly concluded that Georgia could and would afford to do without lawyers and, incidentally, without law, taking its justice in drastic doses from a court which was at once lawyerless and lawless. It was a scoffing denial—the colonists in Savannah bragging that there were no lawyers there and the staid Salzburger from the swamps of Effingham lifting up his rejoicing voice that with them dwelt neither lawyers, courts, nor Rum—a juxtaposition of terms, expressed with an irritating capital, which, whilst doing great injustice to a sober calling, gravely reflected upon the habits and yearnings of the dweller in Yamacraw. When last heard from Effingham was still dry and Chatham wet. It may be remarked here—although it has not the slightest bearing upon the subject in hand—that the Savannah colonist always contended that the waters of the Savannah river needed “qualification.” What the explanation is now since the adoption of artesian has not been made public.

On July 7, 1733, at the close of a hot summer day which had been devoted to feasting and thanksgiving and patriotism, the first court was organized in Georgia, presided over by Bailiffs George Symes, Richard Hodges, and Francis Scott—Noble Jones being recorder and Richard Cannon and Joseph Coles, constables. In order to test the working order of this piece of governmental machinery a case was then and there tried. What was at issue and how determined will never be known and would scarcely lighten the labors of the toiling judiciary of the present day if disclosure could be made. The idea was unique, climaxing a celebration with a law case, forgetful of the wisdom of old Francis Quarles, who counselled that we “use Law and Physicke only for necessity; they that use them otherwise abuse themselves into weake bodies and light purses; they are good remedies, bad businesses, and worse récreations.” Although it lacked somewhat in style and appurtenances—this infant tribunal was

enormously endowed in the matter of jurisdiction. Remembering that Georgia extended "from the most northern stream of the river Savannah along the seacoast to the most southern stream of the Alatomaha, and westward from the heads of the said rivers, respectively, in direct lines to the South Sea," the jurisdiction of the court comprehended "all manner of crimes, pleas, offenses, processes, complaints, actions, matters, causes, and things whatsoever arising or happening within the province of Georgia or between persons inhabiting or residing there, whether the same be criminal or civil, and whether the said crimes be capital or not capital, and whether the said pleas be real or personal or mixed; to be tried according to the laws and customs of the realm of England and of the laws enacted for the said province." Without a lawyer; without the faintest appreciation of the terrible responsibility such a trust imposed; without learning to apprehend and, as was demonstrated, without capacity to observe or ambition to acquire, this remarkable tribunal began its career thousands of miles from the sources of its power, in a strange land and in a community made up of English, Scots, Germans, and Indians. The office or the climate seems to have been too much for Mr. Hodges, who was speedily gathered to his fathers. What might have been the brilliant careers of Symes and Scott will ever be speculative, for Mr. Thomas Causton being named to the vacancy, from that moment the Court was Causton, and Causton was the Court. There being no constitutional inhibitions in those days, it befell that Mr. Causton was also the public storekeeper—an incident not without its influence on the early judicial history of Georgia. Who he was and whence he came! How he looked, and in what garb moved among those dependent upon his lofty caprice, are of the mysteries as profound as the birthplace of Homer or the pleasing air which was wafted to the restrained mariners of the wandering Ulysses. By what comes pretty near being the consensus of colonial opinion, he was of a limitless ambition; passionate and proud; regarding public office as a private investment, and conducting himself generally as the central figure of a co-

lonial system which had been exploited with the single view of enabling him to grow and develop to full proportions. It cannot but be interesting to the learned and dignified jurists who in our day toil for scant reward for the people of Georgia and who sit habitually in the blinding glare of public opinion, to consider their far-off predecessor who, sitting in the humble hut at Savannah, which was by courtesy called a court, did as he pleased not only in defiance of public opinion but with a fixed determination, perfectly understood, to commit public opinion to jail, in his capacity of judge, if it protested, or to starve it into submission in his capacity of storekeeper. When the long-suffering trustees at length concluding that he had sufficiently monopolized the public attention sent Mr. Peter Gordon to take his place, the resourceful Mr. Causton simply shifted his person a few feet from the court-room to the public store, and declining to furnish Mr. Gordon with commissary supplies, that unfortunate gentleman, after a hopeless siege, maintained with fortitude and without provisions, struck his flag and moved out of his stronghold, which was at once reoccupied by Mr. Causton—that great man holding that public office was *feræ naturæ* and when at large belonged to whomsoever could catch and hold it. Grand juries fulminated and petitions filled with more grievances than the Declaration of Independence found their way across the seas and were duly gathered into the Minutes and Journal of the Trustees. The reading is rich and varied. It appears that if an associate justice did not readily acquiesce in the policies and decisions of Mr. Causton, that gentleman incited him to undue indulgence in strong liquor, of which there was no lack in General Oglethorpe's prohibition State. From the bench he declared that the laws of England were no laws in Georgia, and like a modern Caligula produced from his pocket a small book which he proclaimed contained the laws he proposed to administer. He made false imprisonments; discharged grand juries "whilst matter of felonies lay before them"; intimidated petit juries, and "in short, stuck at nothing to oppress the people." When at length an appellate tribunal was formed, the magistrates

to be appealed from were the judges to be appealed to, which, to say the least, was not a promising condition and justified the very moderate criticism that "the administrators of such a policy should, in propriety, be invested with some suitable resemblance of character and equity." One grand jury advised the trustees "that the said Thomas Causton by his office of storekeeper hath the dangerous power in his hands of alluring weak-minded people to comply with unjust measures; and also overcoming others from making just complaints"; and that "the known implacability of the said Causton, and his frequent threatening of such people, is to many weak-minded though well-disposed persons a strong bulwark against their seeking redress." A list of complainants, whose names fill three octavo pages looking like a census of the colony, forms a gruesome exhibit to the official presentment. But grand juries and petitioners were the least of the avenging spirits which began to creep fast upon the gay footsteps of Mr. Causton. It was of his misfortunes that, justly or unjustly, he had incurred the enmity of Dr. Patrick Tailfer and in "A True and Historical Narrative of the Colony of Georgia in America," with a quotation from the fourth ode of Horace on the title-page, and a dedication and preface of length and dignity, the facile pen of that far-off chronicler has preserved for all time an estimate of Mr. Causton and his associates expressed in language, to use the words of Mrs. Gamp upon a celebrated occasion, "such as lambs could not forgive nor worms forget." There was little left of colony, trustees, or the world at large when the doctor laid aside his pen; and this is the sketch he has drawn of Mr. Causton: "Whilst we labored under these difficulties in supporting ourselves, our civil liberties received a more terrible shock; for instead of such a free government as we had reason to expect, and of being judged by the laws of our mother country, a dictator (under the title of bailiff and storekeeper) was appointed, . . . whose will and pleasure were the only laws in Georgia. In regard to this magistrate, the others were entirely nominal, and in a manner but ciphers. Sometimes he would ask in public their opinion, in

order to have the pleasure of showing his power in contradicting them. He would often threaten juries, and especially when their verdicts did not agree with his inclination or humor. And in order to establish his absolute authority, the store and disposal of the provisions, money, and public places of trust were committed to him; by which alteration in his state and circumstances he became in a manner infatuated, being before that a man of no substance or character, having come over with Mr. Oglethorpe amongst the first forty, and left England upon account of something committed by him concerning his majesty's duties. However, he was fit enough for a great many purposes, being a person naturally proud, covetous, cunning, and deceitful, and would bring his designs about by all possible ways and means. As his power increased, so did his pride, haughtiness, and cruelty; inasmuch that he caused eight freeholders with an officer to attend at the door of the court every day it sat, with their guns and bayonets, and they were so commanded, by his orders, to rest their firelocks as soon as he appeared; which made people in some manner afraid to speak their minds, or juries to act as their consciences directed them. He was seldom or never uncovered on the bench, not even when an oath was administered; and being perfectly intoxicated with power and pride, he threatened every person without distinction, rich and poor, strangers and inhabitants, who in the least opposed his arbitrary proceedings, or claimed their just rights and privileges, with the stocks, whipping-post, and log-house, and many times put those threatenings into execution; so that the Georgia stocks, whipping-post, and log-house soon were famous in Carolina, and everywhere in America where the name of the Province was heard of, and the very thought of coming to the colony became a terror in the people's mind." Truly, we have advanced far and much in the matter of judges! Dr. Tailfer has remarks to make about other judges, but these he regarded as weaklings. Mr. Gordon was "of a very winning behavior, affable and fluent in speech," and soon got the good-will of the people who began to lay their grievances before him. But just

as they came to know him well and love him, Mr. Causton cut off his provisions "whereby he was obliged, after about six weeks' stay, to leave the place." Another bailiff, Mr. Parker, according to Dr. Tailfer, was "a man who had nothing to support himself and large family but his day labor, which was sawing," and so he became dependent on the public store. On the same authority, he was a man of no education and was soon moulded to Mr. Causton's liking. Being a slave to liquor, he who plied him most with it (an attention which Mr. Causton never forgot) had him right or wrong on his side. Mr. Darn, who ascended the bench only to die, was crazy in body and mind; and his successor, Mr. R. Gilbert, could neither read nor write. In the Journal of the Trustees it appears that Lieutenant-Colonel Cochran and Captain Thompson, late arrived from Georgia, were before the trustees, and their views are thus noted: "That Mr. Hen. Parker, 1 Bailif, is a tolerable magistrate; but it was a surprise and jest our appointing Gilbert the Taylor to be a magistrate. That there is not a man in the Colony fit to make 3d Bailif." It was of the irony of fate that Mr. John Fallowfield, who being a magistrate, yet sided with the people, was declared by the trustees for so doing to be a leader of malcontents, setting himself up as dictator, and for these reasons summarily dismissed from office. Probably the full effect of Mr. Causton's administration is best illustrated by the typical cases cited by Dr. Tailfer. Mr. Oding-sell appears to have been a rural gentleman from the neighboring province of Carolina; nervous as to temperament, and uninstructed in the devious ways and strange surroundings of city life. The temptation to visit the metropolis of Georgia was too strong for him, and setting aside the natural caution of his disposition and, with the ostensible object of seeing for himself how the colony succeeded, he disembarked upon what should have been hospitable shores. After a philosophic survey of such conditions and sights as were presented to his bucolic experience during the early days of his stay, he became venturesome and undertook to see Georgia by night. He was at once apprehended

as a stroller and carried to the guard-house where he was so threatened with the stocks and whipping-post that "being a mild and peaceable man," the terror and fright threw him into a "high fever and strong delirium"; and after lying in this "distracted condition" for days, crying out to all that they were come to take him to the whipping-post, he died. But not even a trivial consideration of the judicial history of Georgia is permissible without reference to the great and celebrated case of the **King** versus **Watson**. Exactly what Mr. Watson had done it is difficult to ascertain. One record would indicate that having incurred the displeasure of Mr. Causton, he was indicted for stirring up animosities in the minds of the Indians. The *Journal of the Trustees*, on the other hand, suggests that he was really guilty of murder in that he had induced one Skee to indulge in unlimited quantities of rum—enough to have killed two men, and which actually did bring Mr. Skee to a conclusion. But uncertainty as to the crime seems to have presented no obstacle to an indictment. At the trial Mr. Causton presided and acted in the double capacity of judge and witness. The jury having returned several verdicts which did not accord with the views of the court, was on each occasion remanded to their room, until in desperation it found Mr. Watson guilty of "using unguarded expressions," and recommended him to the mercy of the court as a lunatic. Mr. Causton, moulding the verdict to suit himself, sent Mr. Watson to jail, from which he was subsequently released on bail. Mr. Watson, the jury and the people fiercely assailed Mr. Causton for tampering with the verdict, whilst the trustees arraigned him for bailing a lunatic which they declared was itself an act of lunacy. To the frequent representations which were made by the people of the colony, the trustees sitting in their quiet office near the Old Palace Yard, Westminster, turned a deaf ear, and through their secretary, Mr. Benjamin Martyn, expressed their displeasure with much the same indignant earnestness as was exhibited by Mr. Bumble when young Twist petitioned for his rights. But Mr. Causton got out of perspective when he began to encroach on the power and rights

of the trustees. He might do as he pleased when the practical result was only scaring Mr. Odingsell to death and locking up the bibulous Watson. When he became freehanded in the drawing of sola bills he was summoned home for trial. To the relief of the colony and of civilization, he died at sea, and that was the end of Mr. Thomas Causton. Possibly he had never read the Horatian Ode which Dr. Tailfer quoted, or had caught but half of its meaning, and so whilst he used the gifts of the gods boldly neglected to observe that wisdom which the poet enjoins. The system survived him several years, but does not seem to have been carried on in the same magnificent way. Mr. Thomas Jones, for instance, was also "passionate and proud," and was a great stickler for Caustonian precedents. But he lacked the mentality of that distinguished man. In fact, it was said of him that he surpassed Causton in everything that was bad "without having one of his good qualifications."

Things might have gone on thus for many years, if a situation had not arisen in which the absence of the lawyer became conspicuous. Among the hard trials the colonists had to contend with was the tenure under which they held their lands. In their complaints this trouble always occupied a place next to the iniquities of the judiciary. Finally, the trustees, grown desperate, formulated a reform which thickened the fog and concerning which Dr. Tailfer felt called upon to observe: "We believe this paper will perplex most people who have not studied the law, to make sense of it; and as there were no lawyers in Georgia, it would seem as if it had been sent over with no other end than that it should not be understood." Reluctantly it began to be perceived that disease cannot be fought without doctors.

The bench grew gradually better until on June 23, 1752, Georgia became a crown colony, and a short time afterward a general court was located in Savannah, the presiding judge to be called the "Chief Justice of Georgia." It was required that he should be a barrister-at-law who had attended at Westminster. His salary was five hundred pounds, to which were added fees and perquisites aggregating as much more. With the real court

came the lawyer. He was entitled to a retaining fee in any cause of nearly two dollars, and for drawing declarations and the like he was to receive the munificent sum of two shillings and ten pence. But he was here, which was the main thing to be considered. He did not at once settle the land question. Indeed, as late as the 110 Georgia you will find that the good people of Savannah and its instructed bar were still losing their rest over the scope and limitations of estate in tail male. But what was very muddy to the colonist has been made clear as crystal by the present "Chief Justice of Georgia." It was a bright day for Georgia when the lawyer came within her boundaries, and every day has been the brighter for his presence. Consecrated by his oath of office to the cause of the helpless and the oppressed, he has permitted no consideration personal to himself to swerve him from his duty to them nor from his loyalty to the State. The pages of literature glow with his fervid devotion to the true and the good; the forum rings with the lofty eloquence of his unselfish thoughts. A sacrificing profession, forgetful of its own interests, singular in its manifestations of public spirit; when its roll is called warriors and statesmen and patriots answer to their names. Take them from the history of Georgia and it becomes a dry record of dates, a skeleton of the greatness which thrills us when we think of what she has accomplished. Living the life of the intellect—cultured and logical and fearless—his senses have been ever keen to the sounds of distress and his hands stretched with kindly, uplifting strength to the maimed and weak. Striving for character rather than wealth, he has seen and followed the better things and them approved. This was the kindly guest to whom the colonists of Georgia had shut their gates. It is significant of the mighty changes wrought by time that when he was again proscribed within her limits, it was because he had risked life and fortune in her defense, and suffering for her and illustrating her greatness, had stood shoulder to shoulder with the best and bravest of her sons in the great crisis of her statehood.

APPENDIX R.

PUBLIC OPINION OF THE LAW AND OF LAWYERS.

PAPER BY A. P. PERSONS, OF TALBOTTON.

The subject of this little paper is: Public Opinion of the Law and of Lawyers, and should it occur to any of you that but little herein contained is germane to the question, you will readily understand the cause of this patent defect when I state that I was in doubt as to what this paper would be until its completion, and that it was first born and then named. If its name be a *misnomer*, I have nevertheless followed a good precedent, for no one can intelligently name a child in the embryonic state, before he can possibly know whether it will be born a boy, or will be born a girl.

Furthermore, I ask of you an indulgence which I believe will contribute to the harmony of this occasion, and which I know will increase my personal confidence in my case, and that is that you do not here enforce that troublesome rule of law requiring that *allegata* shall be supported by *probata*; and whereas there is no opposing counsel yet marked on the docket in this case, and whereas authorities are quite as often read for mollifying opposing counsel as for the purpose of informing or convincing the court; and whereas it is not a violent presumption to presume that this body is familiar with *all* law, I shall cite you to very few authorities.

Now, therefore, having completed the preamble, if you will agree to file no demurrer to the irrelevant matter and surplusage contained in my pleading, and to overlook all mixed metaphors, I will proceed with the purview.

Neither courts nor lawyers can afford to bow servilely at the bar of public opinion. Their mission is too high for that, yet they cannot disregard the public welfare, and their conduct should be so exemplary as to deserve the public confidence.

That was a very unwise, as well as a very ungenerous remark, ascribed to one of the Vanderbilts who, when reminded of old *Pro Bono Publico*, replied: "The public be d—d."

What is called "public opinion," is usually the opinion of a *very few* individuals, for quite well do we know that the *great body* of men seldom have well-defined opinions of anything excepting such objects as are corporeal in their nature, and are therefore truly tangible. Law, even statute law, which is prescribed by the legislative power and promulgated and recorded in writing, is only a rule of action, a product of the mind, and is not corporeal in that sense herein intended. Therefore when we speak of "public opinion of the law" it is the opinion, after all, of a very limited number.

From a time when the memory of man runneth not to the contrary, there have been those who have complained at government, reviled the law and condemned the courts; therefore those who engage in such conduct and give expression to adverse opinion have abundant precedent for so doing.

While it may be wiser to ignore ordinary revilers of the law, who are not also violators of the law, than to attempt to reason with them or notice their peccadilloes, nevertheless, it may afford temporary entertainment if a lawyer will, in his imagination, put himself in the place of an aggrieved layman and take a comprehensive, unprofessional, irresponsible view of the law.

A general view of the law—a bird's-eye view in other words—is really no view of the law at all, but such is the view generally taken by the average layman, and as you have put yourself in his place, for this once you must look at law and courts from his view-point.

Not long since a man of much general information, a man of affairs, prominent in business and financial circles, a leader in the industrial development of Georgia, and more than all a

man of character, was heard to openly avow his utter want of confidence in the administration of the law when courts pass upon litigated business interests, and to declare his determination to keep out of the courts at whatever sacrifice. Not in the least did he question the integrity of the judiciary, but rather he doubted the integrity of the law and the *efficiency* of courts to accomplish the triumph of justice and of truth.

It is not *improbable* that the gentleman referred to was more or less biased in his opinion by reason of some unsuccessful litigation; nevertheless, it is known to lawyers that such opinions are not uncommon among intelligent laymen. To such a degree does this lack of confidence in the result of litigation extend that in many communities there are successful business men who rather than go into the courts to enforce their legal rights prefer to compromise business differences regardless of the loss that they may thereby incur.

It is easy to explain to a sensible client who is capable of understanding the competency of testimony, the relevancy of testimony and the sufficiency of evidence, that he is, or is not, prepared to make out his case; and he can readily understand in a contested case where there is an issue of fact, that it is difficult and sometimes impossible to forecast the result, but to the average layman there appears to be no good and sufficient reason why the law should not be always perfectly plain and so clearly understood (by lawyers at any rate), that one may absolutely know what is the law, and what the courts will decide *to be* the law governing any given statement of facts.

It appears to Mr. Layman that law should always be a fixed and known quantity—just as he knows that two and two always equal four—that water uncontrolled by artificial means runs down hill when it runs at all, and that William is always a proper noun.

The uncertainty of the law gives him much more concern than do the technicalities or the delays of the law. Mr. Layman sees a Code of Georgia consisting of nearly three thousand pages; he sees one hundred and twelve volumes of Re-

ports of decisions of the Supreme Court of Georgia; he sees encyclopedias of law and encyclopedias of pleading and practice; he sees digests of law, text-books on law, law dictionaries, United States Reports, reports from the various States, and divers works on law, *world without end*. And then he sees lawyers differ about law, and judges *uncertain* about law, and courts *divided* about law. There are *dissenting* opinions, and occasionally he sees a court *reverse* itself, and overrule a former ruling.

When he sees a court overrule a former decision, he *thinks* that the court may have been right one time or the other, but he *knows* that the court was wrong one time or the other, and jurisprudence appears to him as *confused* and *chaotic*. It is hard for him to believe that Burke was right when he defined law as "beneficence acting by rule."

Mr. Layman sees that this uncertainty as to what is law is not merely a phantom that haunts the mind of the inexperienced lawyer, who may be ignorant of those fixed principles of law—the very rudiments of law—which are generally recognized as essential to a clear understanding of *any* law, but he sees *great lawyers* differ, when great and material interests of the commonwealth or of the nation are involved, on occasions when no other motive than such as is suggested by patriotism, intelligence and principle and *law* should influence or control them.

He sees this uncertainty as to what is the law evident not only in justice of the peace courts, those courts usually presided over by men carefully and conscientiously selected from the great body of the ignorant—but he sees it in the highest courts of the land.

Mr. Layman recently saw the Supreme Court of the United States standing five to four on the construction of the United States Constitution in the Porto Rico case. He recently saw that the two very able and distinguished judges of the United States Courts for the Northern and Southern Districts of Georgia respectively, entertained conflicting opinions as to the effect of waiver of homestead in bankruptcy cases. He occasionally sees in our own Supreme Court a dis-

senting opinion from an able and learned judge, and he sometimes sees, as aforementioned, that the Supreme Court has reversed itself (though that actually occurs with much less frequency than is reported by lawyers who are cast in their suits). He sees the judges of our Superior Courts—chosen only from the ranks of the profession—conscientious in the discharge of their duties—actuated both by principle and a desire for honorable reputation, repeatedly reversed by a unanimous Supreme Court.

If, therefore, the courts and the lawyers do not agree as to what is the law, is it surprising that Mr. Layman should regard law as an anomaly?

Why, he sees lawyers of keen discernment, capable of making nice distinctions, differing as to the meaning of simple little English words.

He recently saw the little word use, *u-s-e*, as found in paragraph 1, section 13, article 7, of the Constitution of Georgia, in the *Park mandamus* case, analyzed and defined and considered and adjudged by lawyers and statesmen and journalists, by professors and what-nots, until it acquired a notoriety, if not a *renown*, unequalled by its more pretentious associates of learned length and thunderous sound—such as *incomprehensibility* and *conglomeration*.

Yes, it seems to Mr. Layman that the law is sometimes hard to understand when written in apparently plain and simple English, because do not lawyers differ as to what was the legislative intent and as to the meaning of ordinary words considered in connection with the context? It sometimes looks to Mr. Layman when he is “up a tree” as if the framers of the Georgia Constitution not only “locked the door of the treasury and threw away the key,”—to quote that oft-repeated old chestnut,—but that they wrote the Constitution in hieroglyphics, and that a Champollion of legal lore is needed to decipher the intent and meaning of that instrument.

It seems to Mr. Layman that to write constitutions and statutes so as *not* to be clear and plain, in this day of much learning, is in a measure inexcusable. It seems to him that the paragraphs

of Constitutions and the sections of Codes might be so worded that the man who reads might know exactly what was meant by the man who wrote.

It may be, however, that the man who writes has not, at all times, a clear perception of what he intends, and there can be little doubt that he sometimes fails to realize how far-reaching will become *that* which he does write—and it appears to Mr. Layman that if the legislator would always express clearly the *scope* of the bill which he introduces, there would be some *puzzling* legal issues eliminated.

The intention of the law is generally good, and perhaps its one supreme defect is a want of clearness and fullness of expression, so as to present at once to the mind of the reader the intention of the lawmakers.

It is much easier to point out slight imperfections than to suggest wise remedies. Well do we know that when law attains its highest perfection, there will still be ignorance and error. The Law, to personify it, recognizes its own imperfections in many particulars, and that is why courts of equity were originally established—equity being the correction of that wherein the law, on account of its universality, is deficient.

Mr. Layman ought to know that the uncertainty attending litigation is not always properly chargeable to the law, the courts, or the lawyers. He ought to know that when there is a peculiar train of facts it is exceedingly difficult at times to know what law is applicable to the case. Man is not divine, and his possibilities are limited.

But Mr. Layman, who continually talks through my paper as did Mrs. Gamp's imaginary Mrs. Harris, in "Martin Chuzzlewit," says that there *are* imperfections in the law that *could be corrected*, and by way of brief illustration he cursorily refers with no elaboration to section 3765 of the Code of 1895, which fails to state clearly whether a bond should be under seal or not, in order to run for twenty years after the right of action accrues; and also to paragraph 1, section 12, article 7 of the Constitution of Georgia, which does not clearly say whether the bonded debt

of the State shall never be increased above what it was when the Constitution was ratified, or that having been subsequently decreased, it cannot be increased above that amount to which it has been reduced. He says also that the general registration law enacted in 1894 and embodied in the Political Code of 1895, beginning with paragraph 35 therein, deserves passing remark as being a piece of legislative composition worthy of our newly acquired fellow citizens in the far-away Philippines, acting for themselves in convention assembled. He mentions these little matters, for the purpose of propounding this query: Might it not be well for all lawmaking bodies to have competent committees of revision to carefully revise all bills that come before them, and to so word them that the legislative intent may be clearly expressed? Enrolling committees and engrossing committees do not appear to meet all the requirements. Enrolling committees look to punctuation, grammar and orthography, but bad spelling and incorrect grammar can hardly affect the State or the citizen so seriously as can ambiguous or hidden meaning. Good and careful legislators favoring the general character of a bill sometimes vote for its passage without careful study of its phraseology. Mr. Layman says that if there be no members of the General Assembly competent to act on a committee of revision, that it would pay the State to have such a committee arranged for and appointed outside the legislative membership. (I suppose he thinks himself very facetious.)

These questions sometimes arise in the mind of Mr. Layman: Do not courts give too much attention to precedent, and not enough attention to simple justice and right? Would not more independence of thought, more use of the reasoning faculties, keeping in view the sound principles of law, the statute law and the rights of parties, lead to better and safer results, than does the present custom of relying largely on precedent?

In answer to this we would say that the object of all legal investigation is to ascertain truth and determine what is right, and men differ so widely in their ideas of *right*, that rules and precedents are necessary to safely guide them.

There are probably no more inconsistencies in the law than there are differences of opinion as to what is right between man and man, in complicated transactions. It would hardly be a safe rule that permitted courts to decide all controversies before them according to the court's idea of right, and without any regard for established precedents.

It is related of Lord Chancellor Bacon that when about to swear in a magistrate on a certain occasion, he gave to the magistrate this advice: "Look to your books for the law, and not to your brain."

Lord Bacon departed this life nearly three hundred years ago; law books have multiplied most wonderfully with each succeeding generation; it is the boast of the age that the world has reached the highest state of civilization, of wisdom, and of learning to which it has ever attained; and yet were the great Lord Chancellor to return to earth there would be no good reason why he should retract or amend that admirable advice.

Is it not true that those most learned in the principles of law are most conservative and most cautious in suggesting innovations, and that none are so ready to favor radical changes as those who are least capable of advising wisely and well?

Whatever may be its imperfections, law as laid down in the authorities represents the accumulated wisdom of the ages, and yet precedents, while recognized in the courts, are not followed indiscriminately, promiscuously or incautiously.

According to Lord Talbot, it is much better to stick to the known general rules, than to follow any one particular precedent, which may be founded on reason unknown to us. Cas. Temp. Talbot, 26.

Blackstone, 1st Com., page 70, says: That a former decision is in general to be followed "unless manifestly absurd or unjust."

"To render precedents valid they must be founded in reason and justice." Hobart's Reports, 270.

Under the word "precedent," in Bouvier's law dictionary, we find that "precedents can only be useful when they show that

the case has been decided upon a certain principle, and ought not to be binding when contrary to such principle. If a precedent is to be followed because *it is a precedent*, even when decided *against* an *established rule* of law, there can be no possible correction of abuses."

So we see that the law of precedent by no means deprives courts of the power or the right to exercise reason and common sense.

Again, as to the value of precedents: "It is an established rule to abide by former precedents, which are not evidently against reason or the divine law, where the *same points* come again in litigation; and this is in order to keep the law steady, and not liable to waver with every new judge's opinion. For where the law is uncertain, the people are slaves to the judges, depending for everything they are permitted to enjoy upon their whims and caprices, their enmities or good liking." Clayton's Jus. 246, 247.

There are so many kinds of lawyers and they are so constantly and promiscuously discussed by the public, that I will not undertake to give you my idea of public opinion concerning them.

Our loquacious Mr. Layman says, that the estimation placed upon the profession in each community is more than apt to be such an estimate as the conduct of the bar of that particular community warrants. He says that lawyers differ as much in their ideas of professional ethics as they do in their knowledge of law and strength at the bar.

There are some people who regard a lawyer as only a means to an end; one engaged in the business of helping schemers and rascals to enforce their schemes through the courts. Well, we know that men are very much inclined to measure other people by their own yardsticks.

Passing many who occupy the middle ground, and who regard lawyers as being no worse and no better than they ought to be, there are those who think lawyers useful men in their respective communities—men who stand for what is good and noble, and true—sentinels, standing upon the watch-tower, helping to guard the rights, the interests and the liberties of the people.

In a certain sense of the word lawyers, as a class, are good men. I verily believe that there is less jealousy, less envy and less picayunish rivalry among them than among the members of any other craft, guild, profession or league.

(One advantage in having a Bar Association is that we can get together and boost ourselves when others fail to do it for us.)

But whatever the public may think of the law and the lawyers—whatever it may think of the technicalities, the uncertainties, the delays or the mysteries of the law, it is delightful, aye, it is beautiful, to behold the almost unanimous verdict with which it declares its confidence in the integrity of the judiciary.

There is never a suggestion, nor an intimation—it seems not even a suspicion—that there is the least dishonesty among the men who preside over our courts. There are those who will proclaim on the streets that the courts commit error; there are those who assert that the courts are inconsistent, and of course there is occasionally a disgruntled fellow who will curse the presiding judge (behind his back), and declare that the judge was partial and unfair, but never in my life did I hear a judge of any court in Georgia charged with having sold justice.

I have referred previously to Lord Chancellor Bacon, and in this connection I would say, that when we consider that one so great and so learned—one so “able on the woolsack and at the council board”—one of such “minuteness of observation and amplitude of comprehension”—one whose mind is described by Macaulay as resembling the wonderful tent which Paribanou, the fairy in “Arabian Nights,” gave to prince Ahmed—“fold it and it seemed a toy for the hand of a lady; spread it and the armies of powerful sultans might repose beneath its shade”—Bacon, the Moses and almost the Joshua of philosophy—when we consider. I say, that a man so great and in many respects so noble and so good, could have sold justice in England, and when we consider the power, the prestige, the importance and the convenience of money in this day of luxury and display, of financial combinations and plutocratic power—when we consider all of this and then see the high plane of honor and integrity occupied

by our *judiciary so unanimously and so long*, it becomes remarkable, even marvelous, to contemplate.

That is only as it should be. A gentleman regards it no special compliment to say of him that he is honest. That fact should be so well established as to require no comment either *pro* or *con*. But can so much be said of *any other one class of men* in all this *great country*? Paper after paper before this Association has reiterated this thought, but so exceedingly beautiful is it, that it should be continuously and conspicuously proclaimed to encourage all men to emulation.

Lawyers—good lawyers—do not desire to play fast and loose with the law; they would not have litigation a game of chance; they would not have judgments and decrees favorable only to the cunning, the artful and the wily; they believe it best for justice to triumph and for law to prevail, and there be none who more gladly than they would paraphrase the song of the Lord Chancellor in the opera, so that it might truthfully read:

The law is the true embodiment
Of everything that's excellent,
You'll find it without fault or flaw,
And the courts of the land embody the law.

APPENDIX S.

Symposium on "Justice Courts, their Jurisdiction, Practice and the Review and Enforcement of their Judgments—Wherein Defective?"

(A) DEFECTS IN JUSTICE COURT PRACTICE.

PAPER BY ALBERT H. RUSSELL, OF BAINBRIDGE.

When requested to prepare a short paper on the subject of defects in justice court practice, I felt that the defects were so numerous and so grievous, that I would have more difficulty in determining what to leave out than what to put in such a paper. But more careful investigation of the subject has caused me to change my opinion. While I think the law in regard to reviewing the judgments of these courts should be changed in some respects, to which I will later call attention, yet so far as the practice in the justice court is concerned, I have found no defect that I could remedy, no change that I would make. That practice was well called by Judge Bleckley (62 Ga. 683) "*the ne plus ultra* of judicial simplicity," and I would do nothing to change this judicial simplicity to judicial complexity, or judicial confusion. In my judgment the remedy for all defects, real or fancied, is to have these courts presided over by honest and intelligent men, men with brain enough to know that "J. P." does not always mean "judgment for the plaintiff," and who will decide cases without regard to the question of costs.

It has been my observation that as a rule the notaries public and *ex-officio* justices of the peace are better and more intelligent men than the justices of the peace, and the only reason I can

assign why this should be so is that they are selected in a different manner. Our best citizens do not care to enter a contest before the people for this somewhat troublesome and not very lucrative position, but in many cases they would accept an appointment if the same were tendered. The result of the present method is that the man who from want of sense or want of character can find no place in the business world, has little or no opposition when he becomes a candidate for this really important judicial office. The public should be interested in seeing that good men fill these positions. No one will ever know the outrages that were perpetrated under the forms of law by justices of the peace in bail-trover and peace-warrant cases prior to the decisions of the Supreme Court that they had no jurisdiction in the one, and no authority to collect costs in the other until the matter had been passed on by the superior court.

In *Mitchell v. Addison*, 20 Ga. 54, the question is asked "why should a party be driven into equity, when he can get in a justice's court, in effect, just what he would get in equity?"

In *Johnson v. Nelms*, 21 Ga. 193, it is said that "Our justice's courts take the place of what were known before the Revolution and some time afterwards, as Courts of Conscience. They were Courts for the recovery of small debts, and examined and determined the cases by the oath of the parties or other witnesses, and decided them according to equity and good conscience."

These cases were decided in 1857, and are doubtless correct statements of things as they existed at that time, but in the year 1901, when the justice seems to have become inoculated with the spirit of commercialism, which the newspapers inform us is abroad in the land, it would to the practicing lawyer seem preposterous to lay down the general proposition that cases in these courts are decided "according to equity and good conscience."

The later decisions of our Supreme Court show that the happy condition of affairs described in the 21st Ga. did not long continue. In *Marble v. Laney*, 41 Ga. 625, it appeared that the justice had rendered judgment for an amount beyond his

jurisdiction, and that Judge Johnson of the superior court had refused to sanction a *certiorari*. In the opinion it is said by the Supreme Court that "This record shows a most flagrant abuse of his power by the magistrate. . . . It was said in argument that the Judge of the Chattahoochee Circuit will sanction no *certiorari* from a Justice's Court without an affidavit that the debt is not due, if the judgment is for the plaintiff, or that it is due, if for the defendant. We agree that the judgment of a magistrate is not to be scanned with the eye of a legal critic, but when his action is clearly illegal upon a vital point, *certiorari* lies to reverse it. There is a limit even to the charity with which a higher tribunal must deal with the proceedings of a Justice of the Peace. In this case we think that limit is reached."

The case of *Gunnels v. Deavours*, 54 Ga. 496, shows an instance of judicial ignorance seldom equalled, and perhaps never excelled. The report of the case shows that a justice had certain notes in his hands for suit. The defendant wrote on the back of the notes "I acknowledge service on the within notes." No summons was ever issued, but the justice entered the case on his docket, and being unwell on court day sent his docket to a friend, who entered up judgment for the plaintiff, the justice not being present, and the defendant not appearing.

I trust I will be pardoned for here inserting a copy of an answer to a *certiorari* filed by a justice in my own county, which is certainly a model of its kind.

"to his honor, W N Spence, Judge
of the Superior Court of Decatur County, Georgia.
sir, according to an order i received from you from a *Certiorari*
in answer to a case from my Court of the 1324th district G.M.
case *vs.*, Trial Term on the 8th day
of January 1898 before a jury, answer to be made by the second
Monday in May of the superior court May term 1898. Case
tried on the 8th day of January 1898 was *vs.*
..... mortgage foreclosure for \$15.45 was tried that day be-
fore a Jury of 5 men as clever men as there is in the district and
i thought that they done justice to the cace and I think so yet.
these same papers was tried before me in this court house in

December term 1897. i will admit that there was moves in the trial to keep the papers from the jury, But i did not see how that they would be right for that was what the defendant called for a jury for was to seek his rights. Defendant seem to want to keep all the money he could get hold of for he has not paid no costs on my side of the house yet Not even the costs of these papers And i would not of thought that the defendant would of keeping the note and mortgage foreclosure from the jury when he appealed himself to the Jury. I will admit of my errors as the defendant has accused me of but I recon there is not many of us but what does error sometimes &c And Judge Feeling that i have done the best i could under the circumstance for i am not feeling well today Nohow. And Judge i will assign officially as I assign all other papers.

.....J. P."

I believe that a great improvement on the present system would be to have justices of the peace appointed by the judges of the superior courts. It is true this would require a change in the constitution, but it may be that ere long Georgia will follow in the footsteps of other Southern States, and make a new constitution instead of patching the old one at every general election.

There are several particulars in which I think the method of reviewing the judgments of justice courts should be changed.

Under the law as construed in 97 Ga. 258, while a *certiorari* must be sanctioned within thirty days from the trial, it may be filed at any time within three months. This delay is unnecessary and foolish. After the *certiorari* is sanctioned nothing remains to be done but to file it, and there is no reason why the law should give two months more time in which to deposit it with the clerk. The law should be so amended as to require that the *certiorari* should be sanctioned and filed within thirty days.

Another particular in which I think the law should be changed, is that which allows *certioraris* to be renewed within six months after dismissal for irregularities. In *Hendrix v. Kellogg*, 32 Ga. 435, the Supreme Court held that a *certiorari* was a suit and came within the provisions of that section of the Code allowing suits renewed within six months after dismissal. With

the utmost respect for all the decisions of that distinguished tribunal, I have never been able to see how a *certiorari* can in any proper sense be termed a suit. To my mind a *certiorari*, which is a proceeding to review a judgment of an inferior court, is no more a suit than is a bill of exceptions, which is a proceeding to review a judgment of a superior court, and I think the court would not take kindly to the proposition that a bill of exceptions was a suit, and could be renewed within six months after dismissal by the Supreme Court. Conceding, however, the correctness of this decision, I do not think the law a good one. Thirty days is ample time in which to prepare a proper *certiorari*, and inattention to legal formalities should not be encouraged by a law which, after giving thirty days to prepare it in the first instance, two months more in which to file it, gives six months additional time in which to prepare another after the first has been dismissed for want of compliance with the statute.

The only other change I can suggest would be to provide that a traverse to the answer of a justice should be tried by the judge instead of a jury as provided in Civil Code 4651. It seems to me absurd to say that the whole machinery of the superior court must necessarily be employed to determine what happened on the trial of a fifty-cent case in a justice court. Under the present law a litigious party tries his case before a justice, then appeals to a jury in the justice court; after an adverse verdict he files his petition for *certiorari*, traverses the answer of the justice, has a trial before the superior court judge and a jury of twelve men to determine what did really happen on the trial in the justice court, then a hearing before the judge on the facts as found by the jury, and lastly an appeal to the Supreme Court. No system could be devised that would give a party more chances to win a bad case. As a general rule, however, when a traverse is filed to the answer of the justice, it puts the case to sleep just as effectually as a dose of morphia does a human being. The court is seldom anxious to awake the sleeper, but is more than willing to let it sleep on peacefully, unmolested, and undisturbed.

(B) THE CORRECTION OF ERRORS IN JUSTICE COURTS.

PAPER BY IRVIN ALEXANDER, OF AUGUSTA.

The law relating to the review of the judgments of our magistrates' courts needs some legislation in order to simplify the present methods. The appeal to a jury in a justice court, and subsequent *certiorari* to the superior court, entail too much work for the amount involved, both to lawyer and litigant; and it is an unsatisfactory method of correcting errors, if any there are. I consider an appeal to a jury in a magistrate's court more or less of a farce, and a needless waste of time. This is true because the jurors who are unfortunate enough to have to serve consider the matter of trivial importance, and because they haven't any instructions there as to what the law of the case really is. Judge Blandford, in the case of *Bendheim v. Baldwin*, reported in 73 Ga. 594, in dealing with this subject, said: "The law does not require a justice of the peace to charge the jury at all; his ignorance of the law, as well as propriety, would seem to demand that he should not."

In cases involving less than \$50, a *certiorari* to the superior court should be the mode of correcting errors, both as to the law and the facts, and the decision of the superior court judge should be a final one, without the right of appeal to the Supreme Court. The amount involved does not warrant the expense of additional appeals, and if by reason of the absence of this right an adjudication by the Supreme Court cannot be had on some important point of law, let this remain an open question until such time as litigants with more at stake are able to invoke a ruling. It is better to have a few of the yet contested points of law undecided, than to take up the time of the courts and the money of the county and of the litigants themselves, in worrying over small amounts like those under consideration.

Inasmuch as we have yet to endure our present system of jury trials, perhaps it is as well to allow an appeal from a magistrate's decision to a jury in the superior court, in cases involving more than \$50. But having had this appeal, the verdict of the jury, when sanctioned by the judge of the superior court, should be a final conclusion of the case, and there should be no further appeal. I am aware of the fact that this might work a hardship at times, but where is the law that doesn't, in some instances? The strongest objection that can be urged to this, which has occurred to me, is that questions of practice might not be determined alike in all circuits. But why should this matter materially? The law governing appeals is simple, and every appellant has a fair chance to get to the jury in the superior court; and after that let questions of practice be determined in cases involving greater property rights.

Parties dissatisfied with the decision of the magistrate in cases involving more than \$50 might be given their choice of an appeal or a *certiorari*. If they choose the latter, let them go up on exceptions of law and of fact, or of both, and let them get a final judgment from the superior court. In nine cases out of ten the judgment of the superior court will be right, and in the other the Supreme Court itself, in the opinion of one of the litigants at least, might be wrong; but in either event the losing party will be dissatisfied still. He will not be more dissatisfied if his rights are finally determined in the Superior Court, nor less so if in the Supreme.

The advantage of this early final determination of small litigation would be to lessen the work of the Supreme Court, and to save litigants expenses which their differences do not warrant. One great drawback to petty litigation is its interminableness, and parties will oftentimes endure loss at the outset rather than take their chances on starting a ball rolling which gathers greenbacks all the way, with each successive roll, from a justice court in the wiregrass to the Supreme Court in Atlanta.

While it may have been some satisfaction to Mr. Bagley or to the Columbus Southern Railway to read Judge Simmons's able

opinion of twenty pages in 98 Ga., I doubt the expediency of requiring that much labor in the determination of a six-dollar case; and in this day of paternalism in government, it may not be wrong to protect litigants from being so extravagant in a matter of costs in small cases.

(C) DEFECTS IN JUSTICE COURT PRACTICE.

PAPER BY E. T. MOON, OF LAGRANGE.

Judicial powers were first conferred upon justices of the peace in 1344 by the act of 18 Edward the Third. Their predecessors were only ministerial officers and known as conservators of the peace. At first they were commissioned to try felonies and treasons against the peace, and this was the extent of their judicial power, which went too far in one direction, and was not broad enough in other respects. Their jurisdiction was subsequently enlarged, and the English statutes relating to justices of the peace and their courts in force at the time of the settlement of this country were adopted as a part of our common law by the colonists and the people of the original states. In Georgia the jurisdiction of justices of the peace is fixed by the Constitution. The Constitution of 1868 gave the justices of the peace jurisdiction "in all civil cases where the principal sum claimed does not exceed one hundred dollars." Prior to the Constitution of 1868 their jurisdiction was regulated by statute. The Constitution of 1877 limited the jurisdiction which the justices of the peace had under the Constitution of 1868 by giving them jurisdiction "in all civil cases arising *ex contractu*, and in cases of injuries or damages to personal property, when the principal sum sued for does not exceed one hundred dollars."

I see no good reason why the jurisdiction of justice courts should be limited by the Constitution of 1877 in cases arising *ex delicto* to injuries or damages to personal property. I believe

the Constitution of 1877 should be amended so as to confer upon justices of the peace the same jurisdiction they had under the Constitution of 1868. As the law now is if your ox or cow has been killed by the railroad you can go to the justice's court and get redress, and not be forced to go to the superior court; but if your neighbor wrongfully detains or converts your pig to his own use, though it may not be worth over two dollars, and though both parties may live twenty miles from the court-house, and though there may be a dozen witnesses who live just as far, you can only go to the superior court to get your contentions adjudicated, and woe unto the losing party who is cast in the cost. If the justice courts should have jurisdiction in all cases arising *ex contractu* where the principal sum does not exceed one hundred dollars, why should they not have jurisdiction in all cases arising *ex delicto* where the principal sum does not exceed the jurisdiction of the court? Does a case arising in tort involve more intricate questions of law than a case arising in contract? What logical reason can be given for this limited and restricted jurisdiction in cases arising *ex delicto*? I confess I cannot see any.

Relative to the justice court practice I suggest that the law be amended so as to require petitions for *certiorari* to be sanctioned and filed within thirty days after the final termination of the case. Prior to the act of 1889 the plaintiff in *certiorari* had ninety days to apply for, have sanctioned and file his petition for *certiorari* with the clerk. Under said act it must be sanctioned within thirty days, and if this is done, the petition may be filed with the clerk at any time within three months from the date of the judgment sought to be reversed. Why should the petitioner be required to have his petition sanctioned within thirty days, and then be allowed to stick it in his desk and wait sixty days before filing it? It can only cause unnecessary delay and benefit neither party. In my opinion the legislature intended by the act of 1889 to require *certioraris* to be sanctioned and filed within thirty days, but the act was so worded that it only amended section 4057 of the Code and did not change section 2920, leaving the law as above stated, as was held in the case of Carson v. The Mayor and Council of Forsyth, 97 Ga. 258.

While the justice courts have been ridiculed and criticized from time immemorial, they fill their place in our judicial system. They are our rudimental organs of home rule, the State's housekeepers, and there is nothing practical that can take their place. Cheapness and speediness are their cardinal virtues. Their cost bills are in reach of the poor who have petty litigation, and they are always in time to meet the demands of contentious litigants. They are a radiant and indispensable necessity, and I believe the laws pertaining to justice court procedure at present in Georgia are superior to anything in our whole system of jurisprudence. They seem to be less defective than the statutes governing any other court in our State government.

It is true that in some instances the law is abused by its ministers who occupy these primary offices of justice of the peace, but it is the exception and not the rule. One of the most common instances of its abuse is where the justice of the peace, who happens not to be a man of honor and integrity, and who seems not to care for the enthronement of the law, makes a habit of issuing warrants in criminal cases and settling them outside the court-room in order to get the cost, and sometimes other chattels and effects. The class of cases of which I speak is where the justice agrees, in consideration of the defendant paying the cost, and sometimes something to the prosecutor, to dismiss the warrant. I have known justices of the peace and creditors to collude together and issue criminal warrants for no other purpose than for the collection of a debt, and scaring the accused into paying the debt and whatever cost the officers might demand in order to get the warrant dismissed, and in this way using the criminal courts to oppress the defenseless and get civil redress. This nefarious practice should be prohibited by the enactment of some rigid statute on the subject. To permit it to go on tends to dethrone the law, and instead of the justice being a conservator of the peace and a good and useful servant in helping to keep the State's household in order, he becomes a nuisance to the community and an inspiration to the lawless. The act of December 3, 1897, prohibiting arresting officers from advising or in any

way procuring the dismissal or settlement of criminal warrants in their hands for execution, and providing a penalty for the same went a long ways in the right direction, but it didn't go far enough, and should be amended so as to include justices of the peace. If the justices of the peace were prohibited under strict penalty from dismissing or allowing any warrant to be settled without carefully investigating the case and committing or discharging the accused as the evidence demanded, it would cure many of these evils. The justices would not be so eager to issue warrants without any merit, and would properly investigate those they did issue.

(D) DEFECTS IN JUSTICE COURT PRACTICE.

PAPER BY A. W. EVANS, OF SANDERSVILLE.

The original organization of the justice court was, we are told, for the sole object of conserving the King's peace. The primary idea contemplated nothing more than this. A justice of the peace, called then not justice, but conservator or custodian of the peace, was entirely a ministerial and in no wise a judicial officer. Until the reign of Edward the Third, in England, no further jurisdiction was vested in the justice of the peace than placing under bond those breaking the peace. During this reign they were allowed to try felonies, and then, according to Mr. Blackstone, they acquired the more honorable appellation of Justice of the Peace.

At the institution of the justice court the most worthy men in the county learned in the law were elected by the people to fill this position; which was considered no mean honor. The king afterwards took to himself the prerogative of conferring the office. The jurisdiction of the justice of the peace was broadened during successive reigns, until his jurisdiction comprehended a deal more than was the original purpose. The ten-

dency, however, of the present adjudications of the Supreme Court, as well as legislative enactment, has been directed to the narrowing or restricting of his jurisdiction, but in all the more essential points he has perhaps held his own against the prevalent idea of concentration of power in the higher courts and tribunals. During the progress of the past century he has, though, rather stood still, if anything retrograded, both as to powers and worthiness. Forsooth now to be a justice of the peace in this State is almost *prima facie* an admission of assical stupidity. This boasted "primary or rudimentary organ of home rule" of ours has degenerated into a mere name.

There are many who view the restrictions of the jurisdiction of the justice court with feelings of alarm. Since the adjudication by our Supreme Court denying to the justice of the peace the right to take jurisdiction in trover cases, a very fruitful source of the business of his court has been cut off, and if the analogy be followed and his jurisdiction in claim cases and the like be taken away, like Li Hung Chang when deprived of his yellow riding coat and peacock plumage, mean indeed will be his plight and ignoble his office.

The procedure in justice courts, at least those with which I have best acquaintance, might be described like the good Book describes the heathen, "a law unto themselves." The very looseness of the practice therein influences in a large degree doubtless the lack of veneration oftentimes observable among the masses or the people generally. The procedure in my opinion should be governed by strict rules of practice. Pleadings should do more than merely cause a party sued to inquire "what's up," but a petition should be required to be filed setting forth in orderly paragraphs each cause of action. I appreciate that this is open to the apparently good objection that the justice court is most frequently the resort of parties litigant themselves illy versed in the law of technical pleading, and who, from scant means or from small amount involved in the suit, are deprived of the services of a skilled pleader. This perhaps may be true, and I would not

take the ultra position that complicated and puzzling technical rules of pleadings and practice be adopted, but a certain well-defined system or code of rules of practice, simple and easily understood, yet orderly and systematical. The form book already so universally used by the justices now furnishes the form or style of the process which is really the petition in the justice court, and is called into requisition in practically every case. Why could not this be broadened?

While I would most strenuously resist any threatened effort to strike at our rudimentary organ of home rule, that most highly cherished republican sentiment, yet I am not one of those who believe that the ruin of the country would inevitably follow a change in our present institutions, however ancient their origin or honorable their history. It seems now a time for the practical abolition of this judicature, or rather the reforming of it on another basis. The chief defects of the present system appear to me to be the restricted jurisdiction and the woful ignorance of some of our justices. Were the justice courts in each county brought into a circuit and a competent judge elected, who might visit each district once each month, presiding at each militia precinct on its court day, with jurisdiction to try all cases of a limited amount except those where exclusive jurisdiction is vested in the superior court, somewhat after the similitude of a county court judge, giving the right of appeal where the amount involved is over fifty dollars, this might perhaps relieve the present system of its defects. Give every litigant a right to have his cause heard at his own home district, and yet by a court competent to pass upon the questions of law and fact that may be raised by the issue. This would tend to restore to the justice of the peace his historic place in estimation of the people, and make the position sought after by the best men in the county, as it was wont to be in its first inception. Let this judge be paid an adequate salary by the county, letting the costs of each case go into the county treasury. This court could then be a court of record subject to the established rules of pleading, effective in its judgments and respected by the masses.

(E) DEFECTS IN JUSTICE COURT PRACTICE.

PAPER BY W. W. BACON, JR., OF ALBANY.

My brethren are in error in thinking that the United States Supreme Court is the biggest court in the United States, or that the Supreme Court of Georgia is the biggest court in Georgia. We have in our wire-grass section a court wherein the judge sits upon a stump of an old pine tree and the jury, when he needs one, on a log in front of him. In his august court the decisions of the Supreme Court of Georgia are overruled with very sarcastic remarks and no attorney would dare insult his majesty by quoting such a nonsensical thing as a decision from the United States Supreme Court, which he says is a court for Yankees. When he thought the law of estoppel was working a hardship he overruled a decision of the Supreme Court of Georgia, rendered by the present Chief Justice, with the remark, "That mought be the law in the Supreme Court, but hit haint the law in this un." Why he can grant divorces without a jury, during vacation, at a maximum cost of fifty cents.

"At common law the justice of the peace was a conservator of the peace and an examining magistrate having no civil jurisdiction."

Our Justice Court which was established in 1779 takes the place of what was known as the Court of Conscience, and the object of this court is for "speedy recovery of small debts at a minimum expense."

In each militia district a justice is elected by the people, and a notary public and *ex officio* justice may be, upon recommendation by the grand jury, appointed by the Judge of the Superior Court and commissioned by the Governor. They each hold their office for a term of four years. The latter office was established at the close of the War between the States to prevent the negroes from being elected to fill the office of

Justice of the Peace in those sections where they were in the majority. In a small county like Dougherty we only need one justice in the county, and, in my opinion, none of the counties need more than one justice for each district. No one should be eligible for that office unless he has been a practicing attorney for a short term of years. By having fewer justices and, if necessary, the counties to pay a small salary, we would have no trouble in securing capable young attorneys to fill these offices, who would realize that they would there have an opportunity to display to the public their judicial qualifications, and that this court would be a stepping-stone to better things.

Their jurisdiction is entirely statutory, they having jurisdiction "in all civil cases arising *ex contractu* and in cases of injuries or damages to personal property, when the principal sum does not exceed one hundred dollars." This jurisdiction should be extended to cover cases of trover and damages to real property, and in amount to at least three hundred dollars in certain cases.

Bill Grass sued out a possessory warrant for the recovery of a sow and four pigs in the possession of his neighbor, Elijah Washington. On the trial of the case, the justice stated that he thought Bill Grass ought to win this case and rendered the following judgment: "I fines in favor of Bill Grass for the cost, principle and interest," and turning to the constable he directed, "Put that sow in my lot and you take the pigs for your cost." After court had adjourned and the justice was slowly plodding his way homeward, he was hailed by old Bill. When he had gotten within speaking distance, he stopped, scratched his head and looked at the justice in a very mysterious fashion, "Say, judge, you say I done winned dis case, but I don't see whar I comes in. You wid my sow and Mr. Constable wid my pigs, pears to me like I done loss it."

The judge assuming his most dignified and judicial air slowly looked the negro from head to foot in order to impress him with the magnitude of his knowledge: "There are two kinds of judgments, a judgment *in reum* (*rem*) and a judgment *in pisin-nam* (*personam*); the greatest of these is *reum*. You are the first nig-

ger that ever won a case in my court, and it does seem to me, Bill Grass, that that great honor ought to satisfy you. Don't you know all these niggers is wishing they was you, and that you will be a high monk-a-monk (that's Latin, Bill, for king) among them, you ought to hold up your head and step high." The justice's serious air had the desired effect and with a "thank you, boss," Bill did step high and was perfectly satisfied with the justice's decision and went his way mentally calculating which was the biggest judgment, "*in rum*" or "*in pisin-ham*."

If the object of the justice court is to give every community a court in which can be speedily settled disputes involving small amounts, and thereby to prevent these small matters from taking up the time of those courts wherein it would be an economy for the State to pay the claim of the plaintiff rather than allow the higher court's time to be thus uselessly consumed, surely our present laws are sadly deficient. Nothing can be finally settled in this court under our present system, and every case can now be carried to our highest Court of Appeals, no matter how insignificant the amount involved or how often the principle has been decided.

The Superior Court should have final appellate jurisdiction from the justice court of cases involving less than one hundred dollars, and cases involving from one hundred to three hundred dollars should not be carried to the Supreme Court unless one or more of the judges of that court shall grant the appeal when in his opinion, it involves questions of law of sufficient importance to do so. There should be no appeal to the Superior Court for trials *de novo* of cases involving between fifty and one hundred dollars, as is now allowed. It might also be best to keep the court always open for business, as is the law in a number of the States.

When we have fewer, we will have better justices of the peace. With better justices we can afford to enlarge the jurisdiction, and by enlarging the jurisdiction and making it exclusive to that amount and giving to the superior court final appellate jurisdiction with certain restrictions, we will cut off that vast amount of petty litigation which now takes up the time of the judges of

the Supreme Court, and thereby give them sufficient time to devote to the more important matters brought before them.

Let us stop the flight of the proverbial "tomtit, furnished with a garb of feathers ample enough for a turkey," and allow it to ascend no higher than a circuit court of appeals.

(F) JUSTICE COURTS—THEIR JURISDICTION AND PRACTICE.

PAPER BY A. H. THOMPSON, OF LaGRANGE.

This court, so ancient in its origin and so original in its antiquity, occupies a well-known and not inconsiderable position in modern jurisprudence. The evolutions of society have, indeed, wrought many changes in the powers and duties of this tribunal, but the necessity of its existence, and the value of its service in the administration of law is perhaps more obvious to-day than ever. From the earliest times, in the government of most nations, have existed inferior courts, resembling much in jurisdiction, if not in procedure, the present justice court. It was not, however, until the reign of Henry III. that conservators of the peace were appointed in England, from which office is directly traceable the modern justice of the peace. Then it was that certain knights were selected, before whom every person was required to swear that he would keep the peace. Probably on account of a multiplicity of broken oaths, and the increased population of the Shire, or Hundred, this limited jurisdiction was enlarged, so that in 34 Ed. III. these conservators of the peace received the title of "Justices of the Peace," and were authorized to try petty criminal cases. Their powers were gradually increased during the reign of Henry VII., and we find that in 33 Henry VIII. the justice of the peace was empowered to try all offenses, except felonies, and held regular terms of court, known as "Petty Sessions." Under the administrations

of the Tudors and Stuarts, the burden of local government rested largely with the justice of the peace, who not only exercised criminal jurisdiction, but assumed considerable civil powers, such as the collection of benevolences, fixing the scale of wages, controlling local finances, and maintaining roads and bridges.

With the colonist, this ancient and honorable office came to America, and the magistrate, from the formation of the government, has exercised, practically, the same general jurisdiction. Known before the revolution as "Courts of Conscience," not until 1797 was the name of "Justice of the Peace" applied, at which time causes involving not more than thirty dollars were the limit of their civil authority. 21 Ga. 193. The practice and procedure differed in the several counties of Georgia, according to the judgment and conscience of the magistrates. This difference, however, was made uniform by the Act of July 21, 1879, since which time few, if indeed, any, important changes have been made in justice court practice. Thus we observe that in the progress of law, the justice of the peace has played no inconspicuous rôle, and to him should be accorded, in part, whatever praise may be ascribed to our splendid, though imperfect, system of jurisprudence.

The purpose of this discussion is not so much to relate the history of justice courts as to criticize briefly the system as it now exists. And while it may be an easy task to point out many defects, it is quite difficult to suggest proper remedies. Generally speaking, the Georgia justice performs his duty in an intelligent and acceptable manner. In some instances, however, he has an assumed jurisdiction quite unlimited, as well as original. As an illustration of this high prerogative, a justice summoned a jury, tried a man for lunacy, and in accordance with the verdict of the jury, sentenced the accused to serve a term of twenty years in the asylum. Another justice, unwilling for a restless plaintiff to await the concurrent verdict of two juries at different terms of the superior court granted a total divorce at the first instance. Still another, apprehending the loss of cost

in a case of possessory warrant for the recovery of a yearling, decided that the property was that of the plaintiff, and knowing that the defendant was insolvent, entered up judgment that "the cost must follow the cow." In the trial of a certain case before a justice eight or ten miles distant from the county seat, a member of this association had with him many volumes of Georgia Reports. While arguing the case before the magistrate, the attorney began to read decisions, whereupon the justice interrupted him with the statement that, 'since the legislature had not sent him any of those law books, they could not be used in his court; that the only law he recognized was the Code.' A few years ago a magistrate issued a possessory warrant for the recovery of a negro farm hand, who had left the planter during a busy season. Upon the trial of the case the negro was awarded to the plaintiff. When questioned as to his right to render such judgment, the justice cited as his authority a decision of the Supreme Court, which he found annotated under a Code section, and which stated that a possessory warrant would lie to recover a negro, which decision, of course, was rendered before the war, and applied to a negro slave. While at times, the scope of their authority seems unlimited, yet, almost invariably, it is an error in the administration rather than a defect in the system.

Perhaps the most imperfect feature of justice court practice is its present limited jurisdiction. Since the decision of the Supreme Court in *Blocker v. Boswell*, 109 Ga. 230, wherein the jurisdiction of justice courts over trover suits is denied, we might conclude that it is doubtful, at least, whether the justice court has jurisdiction in the trial of cases of claim to personalty. The constitutional limitation of justice courts is jurisdiction in civil cases, arising *ex contractu*, and in cases of injuries or damages to personal property. This jurisdiction is similarly limited by statute. Code section 4068. Jurisdiction is not implied to a justice of the peace, and he can acquire it only by express terms in the law. Am. & Eng. Enc. of Law, 1st Ed., Vol. 12, p. 426. The true issue in a claim case is the title to the property in-

volved, and arises neither by contract nor damage to the property. In theory, it may be contended, and this appears to be reasonable, that because the court had jurisdiction over the original subject-matter, it has the right to determine every issue arising therefrom. In point of fact, however, the original subject-matter was the issue between the plaintiff and defendant, to which the claimant is, in no true sense, a party. The Constitutional clause giving the justice court jurisdiction, should be extended and made to embrace the trial of rights to personal property.

In practice and procedure, this court is intended to be the simplest form of trial. As Judge Bleckley has expressed it, all that is needful is to arouse the defendant to exclaim, "What's the matter? What's up?" Since the act of 1881 requiring a copy of the plaintiff's demand to be attached to the summons, the same simplicity of trial prevails. The magistrate is not expected to know the intricacies of pleading, and the rules for the admissibility of evidence. If, indeed, such knowledge should be imputed to him, it would be a travesty on truth and common sense. His vocation leads him to think in altogether different channels, and the best that can be reasonably expected of a justice of the peace is that he ascertain the truth from the purest sources at his command. When that is done, even though accomplished, so to speak, by "main strength and awkwardness," it should stand. Substantial justice and not technical law, should be the controlling purpose in this court.

To lawyers and justices alike, the wire-worm of our practice is the *certiorari*, which, under the present procedure, is almost, if not quite, as uncertain in the end as at the beginning. It is also tedious and expensive to bench, bar, and the country. The statutes should be changed so that the magistrate will be required to make a transcript of the material evidence in the trial of the case, verify it in the presence of the witnesses and attorneys for the parties litigant, and certify to it under oath. In the event of *certiorari*, let the answer so made be final, as in cases of certified bills of exceptions. If there is legal evidence

to support the verdict, the appellate court should not disturb the judgment. Section 4651 of the Civil Code, providing for a traverse of the magistrate's answer, should be repealed. Thus the expensive and vexatious trial of traverses in *certiorari*, before superior court juries, would be avoided and the ends of justice subserved.

The settlement of criminal cases, connived at, or directed by some magistrates, after a warrant has been issued, and before trial, is a method by which justice is often thwarted. This practice, when the character of the charge involves moral turpitude, is specially to be condemned. Compounding crimes destroys the force of law, creates an abhorrence for courts, and undermines society. The words, "Unless it be by leave of the court, where the same is pending" in section 324 of the Penal Code, are too often made to read, "Unless it be where the cost is paid." An act, making it a misdemeanor or felony for magistrates to dismiss any warrant, before the same is heard, and determined, in a public committal trial, would probably prevent this malpractice.

APPENDIX T.

REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

The Committee on Jurisprudence and Law Reform respectfully reports that no subjects have been referred for its consideration. The committee recommends that members of the Association having suggestions to offer upon the subject of Law Reform should submit them to the committee in due time, to be considered and reported upon to this body.

It should be a source of great congratulation to the Georgia Bar Association, that the several reports and discussions upon the subject of legal education have resulted not only in appropriate legislation, but have induced the trustees of the University of Georgia to extend the course of legal instruction in that institution from one to two years.

Without discussing the relative merits of the education obtained in the law offices of active practitioners, and that received from the law schools, it may be safely said, that, in either event, admission to the bar should be so guarded that only those applicants should be admitted who are fairly well qualified to enter upon the practice of the profession.

Your committee has no reason to doubt that the Board of Law Examiners, as now constituted, will require applicants to stand such examinations as will demonstrate their fitness for admission to the bar; but the advantages which the student has in attending a well-conducted law school, connected with an academic institution of high grade, will prove of inestimable benefit to him. The very fact that the student is thrown into intimate personal association with several hundred young men enables him to form acquaintanceships and friendships that are not

only pleasant to him, but which will be of lasting practical service to him.

Your committee therefore approves, in the strongest terms, the recent action of the trustees of the University of Georgia, in not only requiring that the course of study shall be two full academic years, but particularly in requiring that the matriculants must be eighteen years old, and must pass satisfactorily an entrance examination covering the elements of an English education.

It has occurred to your committee that legislation is demanded in the case of nuncupative wills. It is well settled that a subscribing witness, who is also a legatee or a devisee under a written will, is competent to testify, but the legacy or devise is void, and yet it has been recently adjudicated that although one of the three necessary witnesses to a nuncupative will may be the sole legatee or devisee, yet that such devise or legacy is *not void*. In a word, in the case of a nuncupative will, which is not a favorite of the law, but which is only tolerated from necessity, a legacy or a devise to one of the witnesses to such nuncupative will is good, while a legacy or devise to one of the subscribing witness to a written will, which is a favorite of the law, is *void*. Your committee recommends that the law applicable in this particular to written wills shall, by appropriate legislation, be made to apply to nuncupative wills.

Respectfully submitted,

P. W. MELDRIM,

Chairman.

APPENDIX U.

REPORT OF COMMITTEE ON INTERSTATE LAW.

To the Georgia Bar Association:

Your Committee on Interstate Law beg leave to submit the following report:

Since the last meeting of our Association little progress seems to have been made toward the accomplishment of uniformity of laws in the United States except that the subject continues to be a matter of general interest and comment, as well as of resolutions by the Bar Associations of the various States of the Union and of the American Bar Association.

By reason of the recent decisions rendered by the Supreme Court of the United States, the subject of the Divorce Laws in the Union is at present exciting the most discussion, and undoubtedly uniformity of laws on this subject in the different States is exceedingly desirable. Indeed, those vital questions, the validity of marriages and the legitimacy of children, may now be said to be largely regulated by geography.

At the last meeting of the American Bar Association, the Committee on Uniformity of State Laws devoted their report almost entirely to the subject of a uniform divorce law, and recommended for general adoption an act upon the subject; which act your committee here appends.

Perhaps the only criticism to be made upon this act is that it should go further and prescribe uniform causes for divorce; for though the matter of the causes for divorce might well differ in the various States without bringing about the serious results which a want of uniformity in other respects has already produced, uniformity in this particular also is much to be commended.

Many a would-be divorcee might be tempted to resort to an evasion of the law in order to place himself in a jurisdiction where he might more easily rid himself of a disagreeable partner than if he remained in his own State, and who would seek the new jurisdiction without any real intention of becoming a permanent resident there. However, your committee most urgently recommend that the action of the American Bar Association be concurred in, and that the act proposed by it be laid before the General Assembly of this State, with the recommendation of this Association that it be made a law.

Your committee desire further to call attention to the fact that the Negotiable Instruments Act recommended by the American Bar Association and referred to in the report of the Committee on Interstate Law at the meeting of this Association, held in 1898, has never become the law of Georgia. This act has been adopted by fifteen States in the Union, besides the District of Columbia, and from each of these jurisdictions the workings of the law are highly commended. This act is the work of a most able member of the New York bar and was carefully reviewed by the commissioners appointed by the various States for the promotion of uniformity of legislation, and is a most admirable compilation of the law on this subject, providing no radical change in the law of the State of Georgia as it now stands and as it has been construed.

Your committee, therefore, recommend that this Association take some definite action to the end that this act may certainly be laid before the General Assembly at its next session, with the request by this Association that it be adopted.

Respectfully submitted,

CLIFFORD L. ANDERSON, Chairman.

JOHN I. HALL,

W. A. WIMBISH,

W. M. HENRY,

E. D. GRAHAM,

Committee.

PROPOSED UNIFORM DIVORCE LAW.

(Referred to in the foregoing report.)

Section 1. No divorce shall be granted for any cause arising prior to the residence of the complainant or defendant in this State, which was not a ground for divorce in the State where the cause arose.

Sec. 2. No person shall be entitled to a divorce for any cause arising in this State, who has not had actual residence in this State for at least one year next before bringing suit for divorce, with a *bona fide* intention of making this State his or her permanent home.

Sec. 3. No person shall be entitled to a divorce for any cause arising out of this State unless the complainant or defendant shall have resided within this State for at least two years next before bringing suit for divorce, with a *bona fide* intention of making this State his or her permanent home.

Sec. 4. No person shall be entitled to a divorce unless the defendant shall have been personally served with process, if within this State, or if without this State, shall have had personal notice duly proved and appearing of record, or shall have entered an appearance in the case; but if it shall appear to the satisfaction of the court that the complainant does not know the address nor the residence of the defendant, and has not been able to ascertain either after reasonable and due inquiry and search continued for six months after suit brought, the court or judge in vacation may authorize notice by publication of the pendency of the suit for divorce, to be given in manner provided by law.

Sec. 5. No divorce shall be granted solely upon default nor solely upon admissions by the pleadings, nor except upon hearing before the court in open session.

Sec. 6. After divorce, either party may marry again, but in case where notice has been given by publication only, and the defendant has not appeared, no decree or judgment for divorce

shall become final or operative until six months after hearing and decision.

Sec. 7. Wherever the word "divorce" occurs in this act, it shall be deemed to mean divorce from the bonds of marriage.

Sec. 8. All acts and parts of acts inconsistent herewith are hereby repealed.

CONSTITUTION AND BY-LAWS OF THE GEORGIA BAR ASSOCIATION.

CONSTITUTION.

ARTICLE I.

The object of this Association shall be to advance the science of jurisprudence, promote the administration of justice throughout the State, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the bar of Georgia. This Association shall be known as The Georgia Bar Association.

ARTICLE II.

Any person shall be eligible to membership in this Association who shall be a member of the bar of this State in good standing, and who shall also be nominated as hereinafter provided. The judges of the Supreme, Superior and City Courts of this State, and the judges of the Federal Courts in this State, shall, so long as they remain in office, be honorary members of this Association, with all the rights and privileges of regular members, and without liability for the payment of dues.

ARTICLE III.

The officers of this Association shall consist of one President, five Vice-Presidents, a Secretary, a Treasurer, an Executive Committee, to be composed of the President, Secretary and Treasurer, together with four members to be chosen by the Association, one of whom shall be Chairman of the committee. Each of these officers shall be elected at each annual meeting for the year ensuing, but the same person shall not be elected President two years in succession. All such elections shall be by ballot. The officers elected shall hold office until their successors are elected and qualified according to the Constitution and By-laws.

ARTICLE IV.

At the meetings of the Association all elections to membership shall be by the Association, upon recommendation of the Executive Committee. All elections for membership shall be by ballot, and several nominees, if from the same county, may be voted for upon the same ballot, and in such case, placing the word "no" against any name or names

upon the ticket, shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat any election for membership. Except during the meetings of the Association, the Executive Committee shall have full power to admit applicants to become members of this Association.

ARTICLE V.

Each member shall pay five dollars to the Treasurer as annual dues, in advance, and no person shall be qualified to exercise any privileges of membership who is in default. Such dues shall be payable and payment thereof enforced, as may be provided by the By-laws. Members shall be entitled to receive all publications of the Association free of charge.

ARTICLE VI.

By-laws may be adopted at any annual meeting of the Association by a majority of the members present.

ARTICLE VII.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each:

1. On Jurisprudence and Law Reform.
2. On Judicial Administration and Remedial Procedure.
3. On Legal Education and Admission to the Bar.
4. On Grievances.
5. On Memorials.
6. On Federal Legislation.
7. On Interstate Law.
8. On Legal Ethics.
9. On Reception.

A majority of the members of any committee, who may be present at any meeting of such committee, shall constitute a quorum for the purpose of such meeting. Vacancies in any office provided for by this Constitution shall be filled by appointment by the President, and the appointee shall hold office until the next meeting of the Association.

ARTICLE VIII.

The Executive Committee shall perform such duties as may be assigned to it by the President, or may be defined by the By-laws, except as herein otherwise directed.

ARTICLE IX.

This Association shall meet annually, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum. The Executive Committee shall require thirty days' notice of the time and place of meeting by publication in a public newspaper to be given, which publication shall be made by the Secretary.

ARTICLE X.

The Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.

ARTICLE XI.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association, or in his profession, on conviction thereof, in such manner as may be provided by the By-laws.

ARTICLE XII.

This Constitution shall go into immediate effect. This Association shall be incorporated under the laws of the State of Georgia as soon as practicable, and until such incorporation all money and property of said Association shall be vested in the President and Treasurer, as trustees thereof, who shall pay over and deliver the same to said corporation as its property, as soon as the corporation is created by law.*

* The charter was duly obtained. See First Report, page 16.

BY-LAWS.

I.

The President shall preside at all meetings of the Association, and in case of his absence one of the Vice-Presidents shall preside. He shall open each meeting with an annual address.

II.

The Secretary shall keep a record of all meetings of the Association, and of all other matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association with the concurrence of the President. He shall notify the officers and members of their elections, and shall keep a roll of the members, and shall issue notices of all meetings. His salary shall be \$200 per annum.

III.

The Treasurer shall collect and, under the direction of the Executive Committee, disburse all funds of the Association; he shall report annually, and oftener if required; he shall keep regular accounts, which shall at all times be open to inspection of the members of the Association. His accounts shall be audited by the Executive Committee. Before discharging any of the duties of this office he shall execute a bond, with good and sufficient security, to be approved by the President, payable to the President and his successors in office, in the sum of five thousand dollars, for the use of the Association, and conditioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof. His salary shall be \$100 per annum.

IV.

The Executive Committee shall meet upon the call of the Chairman. They shall have power to arrange the program for the annual meetings, and to make such regulations, not inconsistent with the Constitution and By-laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of their proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall examine and report upon all matters proposed to be published by the authority of the Association, and attend to the publication and distribution of the same. They shall have the power to make the Association liable for any debt

amounting to not more than half of the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.

V.

At each annual, stated or adjourned meeting of the Association, the Order of Business shall be as follows:

1. Reading minutes of preceding meeting.
2. Address of the President.
3. Report of Treasurer.
4. Report of Executive Committee.
5. Elections, if any, to membership.
6. Report of other committees.
7. Report of special committees.
8. Election of officers and appointment of committees.
9. Miscellaneous business.

This Order of Business may be changed by a vote of a majority of the members present.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

VI.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by letter to the Secretary to that effect, and by payment of his annual dues, he shall be deemed to have declined to become a member.

VII.

In pursuance of Article VII. of the Constitution, there shall be the following standing committees:

1. A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law, and of recommending such as, in their opinion, may be entitled to the favorable consideration of the Association.

2. A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending from time to time to the Association such action as they may deem expedient. Both of the foregoing committees shall invite suggestions on the topics confided to their charge from all the members of the Association, and, if they see fit, from all the lawyers of the State; and where their report recommends changes in legislation, the Association may appoint either the same or other committees to bring such matters properly to the attention of the General Assembly.

3. A Committee on Legal Education and Admission to the Bar, who

shall be charged with the duty of examining and reporting what changes it is expedient to propose in the system and mode of legal education and of admission to the practice of the profession in the State of Georgia.

It shall be the duty of the foregoing standing committees to consider the suggestions made in each address and paper presented at each annual meeting of the Association, which fall within the scope of the topics confided to said committees, and to report thereon at the next annual meeting.

4. A Committee on Grievances, who shall be charged with the hearing of all complaints which may be made in matters affecting the interest of the legal profession, or the professional conduct of any member of this bar, and the administration of justice, and to report the same to the Association with such recommendation as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against such offenders, and to such extent as the Association may order, the cost of such proceedings to be paid by the Executive Committee out of moneys subject to be appropriated by them.

5. A Committee on Memorials, who shall prepare and furnish to the Secretary brief, appropriate notices of members who have died during the year preceding each annual meeting; such notices not to exceed one page of printed matter, and to be published in the annual report. They shall also prepare or secure annually at least one biographical sketch of some member of the bench or bar of Georgia, now deceased, having special reference to his professional career, and have the same presented at the annual meeting; and, whenever practicable, they shall secure a steel engraving or other suitable picture of the subject of the sketch to be inserted in the published proceedings.

6. A Committee on Federal Legislation, who shall be charged with the duty of examining and reporting upon such Federal legislation proposed or enacted, as may be of interest to the legal profession, and especially such as affects the Federal judicial system, and procedure and practice in the Federal courts.

7. A Committee on Interstate Law, who shall be charged with the duty of bringing to the attention of the Association such action as shall be proposed by the American Bar Association, looking to the promotion of greater uniformity in the laws of the several States on subjects of common interest; and of suggesting propositions looking to the same end, and, where such action is favored by the Association, to bring the same to the attention of the General Assembly, and to endeavor to secure the adoption of the legislation so recommended.

8. A Committee on Legal Ethics, who shall be charged with the duty of reducing to the form of rules or canons the principles of ethics regulating the relations of lawyers to the courts, the public, their clients and each other; with the further duty of taking such action as they may deem best, in case any departures from these principles by mem-

bers of the bar of the State come to their notice or are brought to their attention.

9. A Committee on Reception, who shall be charged with the duty, at all meetings of the Association, of promoting social intercourse and fraternity among the members, to the end that every member attending shall become personally acquainted with every other member.

VIII.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of the Association, and a list thereof, and of all special committees, transmitted to the Secretary within thirty days from each annual meeting, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with the power to adopt rules for their own government, not inconsistent with the Constitution or these By-laws. The Secretary shall, within thirty days after receipt thereof from the President, notify each committeeman, giving full list of his committee. Any standing committee of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation by the member so absent of his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance, and may provide for the disposition of the fines collected under such a rule.*

IX.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relation to this Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Grievances, in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall thereupon examine the complaint, and if they are of the opinion that the matters therein alleged are of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days of the time and place when the committee will meet for the consideration thereof, to be served on the member complained of, either personally or by leaving the same at his place of business during office hours, properly addressed to him.

If after hearing his explanation, the committee shall deem it proper that there shall be a trial of the charge, they shall cause a similar notice of five days of the time and place of trial to be served on the party complained of. The mode of procedure upon the trial of such complaint

*As to payment of expenses of committees, see Report for 1885-86, page 70. As to printing committee reports in advance of the annual meetings, see Report for 1886-87, page 6.

shall conform as near as may be to the provisions of §§420 to 434 of the Code, inclusive.*

X.

Nominations of candidates to fill the respective offices may be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or to membership, must be by ballot. A majority of the votes cast shall be sufficient to elect to office: but five negative votes shall be sufficient to defeat an election to membership.

XI.

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the person thus appointed shall hold for the unexpired term of his predecessor; but if a vacancy occur in the office of President it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy, and the person elected shall hold office for the unexpired term of his predecessor.

XII.

All annual dues of this Association shall be paid in advance by each member upon his election, and on or before May 1st for each year during membership, and any member failing to pay his annual dues in such manner shall be in default, and upon the order of the President, the Secretary shall strike the name of such member from the roll of membership, and such member shall not be reinstated unless, for good cause shown, the President shall excuse such default, in which last event the name of such member shall, upon the order of the President, be restored by the Secretary to the roll of membership. The Treasurer shall on the 15th day of April of each year inform each member of the Association that on the first day of May next the Treasurer will draw at sight on said member for the amount due to the Association, and on the first day of May the Treasurer shall so draw for such dues upon each and every member of the Association who may at that time be indebted to the Association.

XIII.

These By-laws may be amended at any stated, adjourned or annual meeting of the Association by a majority vote of those present.

XIV.

Any officer may resign at any time, upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association, and from the date of the receipt by the

* The citation is to the Code of 1882. In Civil Code of 1895, the sections are 4431 to 4445 inclusive.

Secretary of a notice of resignation, with an endorsement thereon by the Treasurer that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

XV.

The Association shall hold its annual meeting each year at such time and place as may be fixed by the Executive Committee, and by the direction of the Executive Committee the Secretary shall give notice of the time and place of such annual meeting by publication in a public newspaper for thirty days. If the President and Executive Committee shall determine that it is necessary for said Association to hold any other meeting during the year, the same shall be held at such time and place as the President and Executive Committee may fix, and upon twenty days' notice of such time and place, to be given by the Secretary, by publication in a public newspaper, and the Secretary shall give this notice upon the order of the President.

XVI.

No resolution complimentary to any officer or member shall be entertained.

XVII.

All addresses, essays and other papers, read at the meetings of the Association, shall be transmitted to the Secretary within thirty days from the adjournment of the annual meeting, and if not so furnished, the Executive Committee shall proceed to publish the proceedings without such papers.

XVIII.

There shall be a standing committee consisting of three members, to be appointed by the President during the session of the Association. This committee shall be known as the Committee on Legislation, and its duty shall be to prepare for legislative action such matters requiring legislation as may have received the approval of the Association. It shall further be the duty of such committee to make due presentation of such proposed legislation to the appropriate legislative committees or bodies.

OFFICERS AND COMMITTEES OF THE GEORGIA BAR ASSOCIATION.

FOR 1901-1902.

President.

CHARLTON E. BATTLE, Columbus.

Vice-Presidents.

First—BURTON SMITH	Atlanta
Second—PETER W. MELDRIM	Savannah
Third—A. P. PERSONS	Talbotton
Fourth—T. W. HARDWICK	Sandersville
Fifth—W. C. BUNN	Cedartown

Secretary.

ORVILLE A. PARK, Macon.

Treasurer.

Z. D. HARRISON, Atlanta.

EXECUTIVE COMMITTEE.

ALEXANDER R. LAWTON, Chairman	Savannah
LLOYD CLEVELAND	Griffin
T. A. HAMMOND	Atlanta
J. R. TERRELL	Greenville
REUBEN R. ARNOLD	Atlanta

THE PRESIDENT, THE SECRETARY AND THE TREASURER *ex officio*.

STANDING COMMITTEES.

On Jurisprudence and Law Reform.

J. Hansell Merrill, Chairman	Thomasville
Hamilton McWhorter	Lexington
H. C. Peeples	Atlanta
H. E. W. Palmer	Atlanta
C. A. Turner	Macon

On Judicial Administration and Remedial Procedure.

Sylvanus Morris, Chairman	Athens
M. A. O'Byrne	Savannah
F. H. Miller	Augusta
J. C. C. Black	Augusta
H. H. Perry	Gainesville

On Legal Education and Admission to the Bar.

Spencer R. Atkinson, Chairman	Atlanta
T. J. Chappell	Columbus
R. B. Russell	Winder
M. J. Pearsall	Moultrie
Morris Brandon	Atlanta

On Grievances.

John D. Little, Chairman	Columbus
John M. Slaton	Atlanta
P. H. Brewster	Atlanta
L. Z. Rosser	Atlanta
A. R. Lawton	Savannah

On Memorials.

J. L. Hopkins, Chairman	Atlanta
Z. D. Harrison	Atlanta
Orville A. Park	Macon
J. C. McDonald	Waycross
F. D. Peabody	Columbus

On Federal Legislation.

Thomas G. Lawson, Chairman	Eatonton
T. R. Jones	Dalton
J. L. Tye	Atlanta
Roland Ellis	Macon
T. A. Hammond	Atlanta

On Interstate Law.

Peter W. Meldrim, Chairman	Savannah
T. M. Cunningham, Jr.	Savannah
W. A. Wimbish	Columbus
Marion W. Harris	Macon
A. P. Persons	Talbotton

On Legal Ethics.

Joseph R. Lamar, Chairman	Augusta
Irvin Alexander	Augusta
Albert Howell, Jr.	Atlanta
W. G. Charlton	Savannah
Clem. P. Steed	Macon

On Reception.

H. H. Revill, Chairman	Greenville
T. J. Chappell	Columbus
J. B. Burnside	Hamilton
Eugene R. Black	Atlanta
Shepard Bryan	Atlanta

On Legislation.

Washington Deasau, Chairman	Macon
J. R. Lamar	Augusta
A. C. King	Atlanta

Delegates to American Bar Association.

Samuel Lumpkin	Atlanta
Roland Ellis	Macon
J. H. Merrill	Thomasville

OFFICERS
OF
THE GEORGIA BAR ASSOCIATION
FOR PAST TERMS.

1883-84.

President.

L. N. WHITTLE.

Vice-Presidents.

- | | |
|-------------------------|--------------------|
| 1—CHARLES C. JONES, JR. | 3—M. H. BLANDFORD. |
| 2—HENRY JACKSON. | 4—POPE BARROW. |
| 5—GEORGE A. MERCER. | |

*Secretary and Treasurer—*W. B. HILL.

1884-85.

President.

WILLIAM M. REESE.

Vice-Presidents.

- | | |
|------------------|-------------------|
| 1—F. H. MILLER. | 3—W. S. BASINGER. |
| 2—L. F. GARRARD. | 4—W. M. HAMMOND. |
| 5—H. P. BELL. | |

Secretary.

W. B. HILL.

Treasurer.

S. BARNETT, JR.

 1885-86.

President.

JOS. B. CUMMING.

Vice-Presidents.

1—P. L. MYNATT.

3—J. M. PACE.

2—W. A. LITTLE.

4—W. H. DABNEY.

5—F. G. DUBIGNON.

Secretary.

W. B. HILL.

Treasurer.

S. BARNETT, JR.

 1886-87.

President.

CLIFFORD ANDERSON.

Vice-Presidents.

1—N. J. HAMMOND.

3—A. S. ERWIN.

2—W. A. LITTLE.

4—A. H. HANSELL.

5—J. C. C. BLACK.

Secretary.

W. B. HILL.

Treasurer.

S. BARNETT, JR.

 1887-88.

President.

WALTER B. HILL.

Vice-Presidents.

1—GEO. A. MERCER.

3—I. E. SHUMATE.

2—POPE BARROW.

4—B. P. HOLLIS.

5—E. N. BROYLES.

Secretary.

J. H. LUMPKIN.

Treasurer.

S. BARNETT, JR.

 1888-89.

President.

MARSHALL J. CLARKE.

Vice-Presidents.

1—J. C. C. BLACK.

3—C. C. KIBBEE.

2—A. S. CLAY.

4—A. T. MCINTYRE, JR.

Secretary.

JOHN W. AKIN.

Treasurer.

S. BARNETT, JR.

 1889-90.

President.

GEORGE A. MERCER.

Vice-Presidents.

1—W. DESSAU.

3—JOHN L. HOPKINS.

2—POPE BARROW.

4—S. R. ATKINSON.

Secretary.

JOHN W. AKIN.

Treasurer.

S. BARNETT, JR.

 1890-91.

President.

FRANK H. MILLER.

Vice-Presidents.

1—M. J. CLARKE.

3—P. W. MELDRIM.

2—C. N. FEATHERSTON.

4—M. P. REESE.

5—GEORGE D. THOMAS.

Secretary.

JOHN W. AKIN.

Treasurer.

Z. D. HARRISON.

1891-92.

President.

JOHN PEABODY.

Vice-Presidents.

1—A. O. BACON.

3—M. P. REESE.

2—JOHN I. HALL.

4—JOHN W. PARK.

5—W. H. FLEMING.

Secretary.

JOHN W. AKIN.

*Treasurer.*Z. D. HARRISON.

1892-93.

President.

W. DESSAU.

Vice-Presidents.

1—JOHN W. PARK.

3—M. P. REESE

2—W. M. HAMMOND.

4—W. H. FLEMING.

Secretary.

JOHN W. AKIN.

*Treasurer.*Z. D. HARRISON.

1893-94.

President.

LOGAN E. BLECKLEY.

Vice-Presidents.

1—W. H. FLEMING.

3—H. R. GOETCHIUS.

2—C. N. FEATHERSTON.

4—A. H. MACDONELL.

5—C. C. SMITH.

Secretary.

JOHN W. AKIN.

Treasurer.

Z. D. HARRISON.

1894-95.*President.*

WILLIAM H. FLEMING.

Vice-Presidents.

1—GEORGE HILLYER.

3—W. G. CHARLTON.

2—L. C. LEVY.

4—JNO. H. MARTIN.

5—C. A. TURNER.

Secretary.

JOHN W. AKIN.

Treasurer.

Z. D. HARRISON.

1895-96.*President.*

JOHN W. PARK.

Vice-Presidents.

1—POPE BARROW.

3—F. D. PEABODY.

2—BURTON SMITH.

4—C. C. SMITH.

5—H. MCWHORTER.

Secretary.

JOHN W. AKIN.

Treasurer.

Z. D. HARRISON.

1896-97.*President.*

HENRY R. GOETCHIUS.

Vice-Presidents.

1—H. MCWHORTER.

3—J. RENDER TERRELL.

2—W. C. GLENN.

4—A. H. MACDONELL.

5—H. H. PERRY.

Secretary.

JOHN W. AKIN.

Treasurer.

Z. D. HARRISON.

1897-98.

President.

JOHN W. AKIN.

Vice Presidents.

1—H. McWHORTER.

3—J. CARROLL PAYNE.

2—L. C. LEVY.

4—JOHN F. DELACY.

5—P. W. MELDRIM.

Secretary.

J. H. BLOUNT, JR.

Treasurer.

Z. D. HARRISON.

1898-99.

President.

HAMILTON McWHORTER.

Vice-Presidents.

1—J. R. LAMAR.

3—MORRIS BRANDON.

2—J. HANSELL MERRELL.

4—W. M. HENRY.

5—T. J. CHAPPELL.

Secretary.

ORVILLE A. PARK.

Treasurer.

Z. D. HARRISON.

1899-1900.

President.

JOSEPH R. LAMAR.

Vice-Presidents.

1—H. W. HILL.

3—JOHN J. STRICKLAND.

2—CHARLTON E. BATTLE.

4—B. H. HILL.

5—JOHN W. BENNETT.

Secretary.

ORVILLE A. PARK.

Treasurer.

Z. D. HARRISON.

1900-1901.

President.

H. W. HILL.

Vice-Presidents.

1—CHARLTON E. BATTLE.

3—B. H. HILL.

2—JOHN C. HART.

4—A. F. DALEY.

5—J. B. BURNSIDE.

Secretary.

ORVILLE A. PARK.

Treasurer.

Z. D. HARRISON.

Roll of the Georgia Bar Association

1901-1902.

Honorary Life Members.*

Ex-Chief Justice Logan E. Bleckley	Clarkesville
Major Charles H. Smith ("Bill Arp")	Cartersville
Chancellor Walter B. Hill, LL.D	Athens

Honorary Members.†

Adams, John S., Judge City Court	Dublin
Bennett, Joseph W., Judge Brunswick Circuit	Brunswick
Bower, Byron B., Judge City Court	Bainbridge
Brinson, Edward L., Judge Augusta Circuit	Waynesboro
Brown, W. F., Judge City Court	Carrollton
Butt, W. B., Judge Chattahoochee Circuit	Columbus
Calhoun, Andrew E., Judge Criminal Court	Atlanta
Candler, John S., Judge Stone Mountain Circuit	Edgewood
Clark, William M., Judge City Court	Forsyth
Cobb, Andrew J., Associate Justice Supreme Court	Atlanta
Crisp, Charles F., Judge City Court	Americus
Cobb, Howell, Judge City Court	Athens
Dart, F. Willis, Judge City Court	Douglas
Davis, Philip W., Judge City Court	Lexington
Estes, John B., Judge Northeastern Circuit	Gainesville
Evans, Beverly D., Judge Middle Circuit	Sandersville
Eve, William F., Judge City Court	Augusta
Falligant, Robert, Judge Eastern Circuit	Savannah

* See 10 Georgia Bar Association, Page 6.

† See Constitution, Article 2.

Felton, William H., Jr., Judge Macon Circuit.....	Macon
Fish, William H., Associate Justice Supreme Court.....	Atlanta
Fite, A. W., Judge Cherokee Circuit.....	Cartersville
Freeman, Alvin D., Judge City Court.....	Newnan
Gober, George F., Judge Blue Ridge Circuit.....	Marietta
Griffin, W. H., Judge City Court.....	Valdosta
Hammond, E. W., Judge City Court.....	Griffin
Hansell, A. H., Judge Southern Circuit.....	Thomasville
Harris, Sampson W., Judge Coweta Circuit.....	Carrollton
Harris, J. W., Judge City Court.....	Cartersville
Hart, John C., Judge Ocmulgee Circuit.....	Union Point
Henry, W. M., Judge Rome Circuit.....	Rome
Herrington, Alfred, Judge City Court.....	Swainsboro
Hobbs, Richard, Judge City Court.....	Albany
Holden, Horace M., Judge Northern Circuit	Crawfordville
Janes, Charles G., Judge Tallapoosa Circuit.....	Cedartown
Jones, J. B., Judge City Court.....	Clarksessville
Jones, W. R., Judge City Court.....	Greenville
Lester, Chas. J., Judge City Court.....	Barnesville
Lewis, H. T., Associate Justice Supreme Court.....	Atlanta
Little, William A., Associate Justice Supreme Court.....	Atlanta
Littlejohn, Z. A., Judge Southwestern Circuit.....	Cordele
Longley, F. M., Judge City Court.....	LaGrange
Lumpkin, J. H., Judge Atlanta Circuit.....	Atlanta
Lumpkin, Samuel, Presiding Justice Supreme Court.....	Atlanta
Newman, William T., U. S. District Judge.....	Atlanta
Norwood, Thomas M., Judge City Court.....	Savannah
Nottingham, W. D., Judge City Court.....	Macon
Pardee, Don A., U. S. Circuit Judge.....	Atlanta
Parker, Thomas A., Judge City Court.....	Baxley
Parks, James G., Judge City Court.....	Dawson
Prior, Garland H., Judge City Court.....	Gainesville
Proffitt, Pulliam P., Judge City Court.....	Elberton
Reagan, E. J., Judge Flint Circuit.....	McDonough
Reece, John H., Judge City Court.....	Rome
Reid, H. M., Judge City Court.....	Atlanta
Roberts, David M., Judge Oconee Circuit.....	Eastman
Robinson, Vernon O., Judge City Court.....	Wrightsville
Russell, Richard B., Judge Western Circuit.....	Winder
Seabrook, Paul E., Judge Atlantic Circuit.....	Pineora

Sheffield, H. C., Judge Pataula Circuit.....	Arlington
Simmons, Thomas J., Chief Justice Supreme Court.....	Atlanta
Sparks, J. D., Judge City Court.....	Brunswick
Speer, Emory, U. S. District Judge.....	Macon
Spence, W. N., Judge Albany Circuit.....	Camilla
Stark, W. W., Judge City Court.....	Harmony Grove
Toombs, William H., Judge City Court.....	Washington
Williams, J. S., Judge City Court.....	Waycross
Willis, James L., Judge City Court.....	Columbus

ACTIVE MEMBERS.

Abbott, B. F.	Atlanta
Abbott, Joe	Acworth
Adams, S. B.	Savannah
Adamson, W. C.	Carrollton
Akin, John W.	Cartersville
Akin, Paul F.	Cartersville
Alexander, A. L.	Savannah
Alexander, Irvin	Augusta
Allen, J. Y.	Thomaston
Alston, R. C.	Atlanta
Anderson, C. L.	Atlanta
Arnold, Reuben	Atlanta
Arnold, R. R.	Atlanta
Atkinson, S. R.	Atlanta
Atkinson, T. A.	LaGrange
Bacon, A. O.	Macon
Bacon, W. W., Jr.	Albany
Barnett, Samuel	Atlanta
Barrett, W. H.	Augusta
Barrow, Pope	Savannah
Bartlett, A. L.	Brownsville
Bartlett, C. L.	Macon
Bass, C. L.	Clarkeville
Battle, C. E.	Columbus
Baxter, E. B.	Augusta
Beck, Marcus W.	Griffin
Bell, Geo. L.	Atlanta
Bennett, Jno. W.	Waycross
Berner, Robt. L.	Forsyth
Black, J. C. C.	Augusta
Black, Eugene R.	Atlanta
Bloodworth, O. H. B.	Forsyth
Blue, W. F.	Macon
Boatwright, F. G.	Tifton
Bowden, T. L.	Columbus

Boyd, J. D.	Griffin
Brand, C. H.	Lawrenceville
Brandon, Morris	Atlanta
Branham, J.	Rome
Brantley, W. G.	Brunswick
Brewster, P. H.	Atlanta
Brown, J. L.	Atlanta
Brown, W. R.	Atlanta
Brooks, Clyde L.	Atlanta
Bryan, Shepard	Atlanta
Bunn, W. C.	Cedartown
Burnside, J. B.	Hamilton
Burwell, W. H.	Sparta
Callaway, F. E.	Atlanta
Callaway, M. P.	Macon
Carson, A. A.	Columbus
Chappell, T. J.	Columbus
Charlton, W. G.	Savannah
Charters, W. A.	Dahlonega
Chisholm, W. S.	Savannah
Cleveland, Lloyd	Griffin
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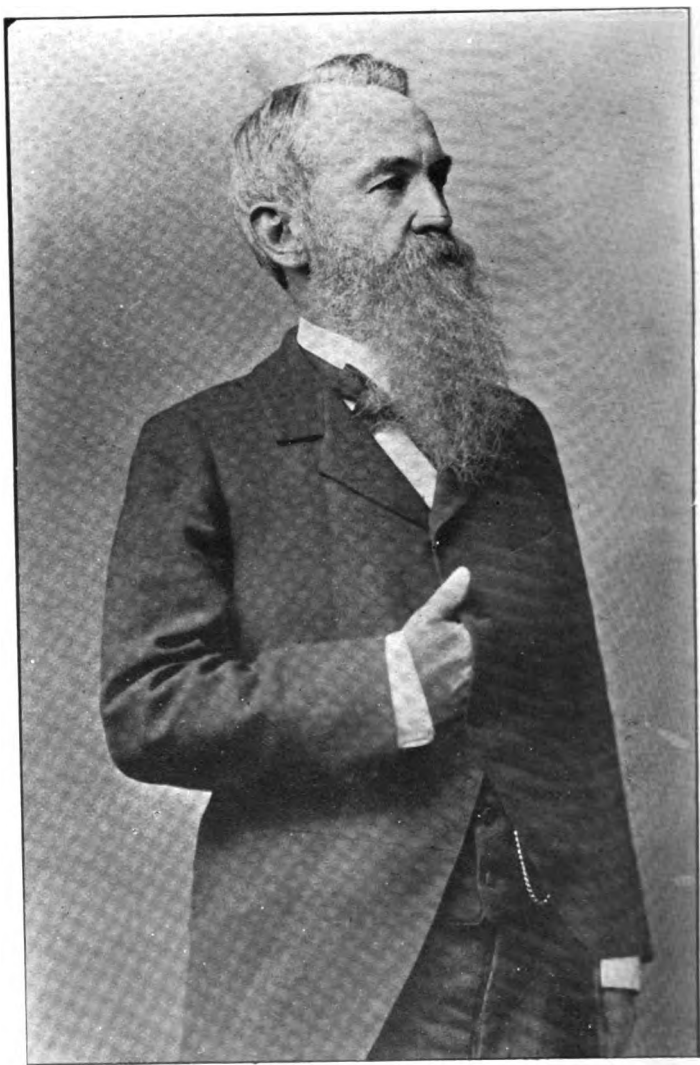
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REPORT
OF THE
NINETEENTH ANNUAL SESSION
OF THE
Georgia Bar Association
HELD AT
WARM SPRINGS, GA.

ON
July 3rd, 4th and 5th, 1902.

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SECRETARY

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 Griffin, W. H., Valdosta.
 Gwyn, Chas. R., Zebulon.
 Hall, C. H., Jr., Macon.
 Hammond, T. A., Atlanta.
 Harris, M. W., Macon.
 Harrison, Z. D., Atlanta.
 Hatcher, S. B., Columbus.
 Henderson, D. L., Vienna.
 Henry, W. M., Rome.
 Hill, H. W., Greenville.
 Hill, Walter B., Athens.
 Hodnett, W. C., Carrollton.
 Holden, H. M., Crawfordsville.
 Hollingsworth, W. R., Fayetteville.
 Hooper, F. A., Americus.
 Howell, W. S., Greenville.
 Irvin, I. T., Jr., Washington.
 Jones, W. R., Greenville.
 Lawton, Alexander R., Savannah.
 Levy, L. C., Columbus.
 Little, W. A., Columbus.
 Lumpkin, J. H., Atlanta.
 Lumpkin, Sam'l, Atlanta.
 Meader, R. D., Brunswick.
 Meldrim, P. W., Savannah.
 Merrill, J. H., Thomasville.
 Meyer, A. A., Atlanta.
 Miller, B. S., Columbus.
 Miller, W. K., Augusta.
 Moon, E. T., LaGrange.
 Moore, R. Lee, Statesboro.
 Morris, Sylvanus, Athens.
 McCurry, Julian B., Hartwell.
 McDonald, W. W., Douglas.
 McIntosh, J. R., Atlanta.
 McLaughlin, B. F., Greenville.
 McNeil, J. M., Columbus.
 Nottingham, W. D., Macon.
 Osborne, W. W., Savannah.
 Owens, Geo. W., Savannah.
 Palmer, Geo. C., Columbus.
 Park, J. W., Greenville.
 Park, Orville A., Macon.
 Patterson, T. E., Griffin.
 Peeples, H. C., Atlanta.
 Persons, A. P., Talbotton.
 Powell, A. G., Blakeley.
 Preer, Peter, Columbus.
 Quincey, J. W., Douglas.
 Rambo, L. M., Ft. Gaines.
 Raines, A. M., Dawson.
 Revill, H. H., Greenville.
 Sanders, J. H., Cedartown.
 Seabrook, Paul E., Pineora.
 Searcy, W. E. H., Griffin.
 Skelton, J. H., Hartwell.
 Smith, Alex. W., Atlanta.
 Smith, Burton, Atlanta.
 Smith, Victor, Atlanta.
 Stapleton, N. L., Dawson.
 Steed, Clem P., Macon.
 Stark, W. W., Harmony Grove.
 Sweat, J. L., Waycross.
 Terrell, J. M., Greenville.
 Terrell, J. R., Greenville.
 Thompson, A. H., LaGrange.
 Tipton, J. H., Sylvester.
 Toomer, W. M., Waycross.
 Travis, J. L., Atlanta.
 Van Epps, Howard, Atlanta.
 Whipple, U. V., Cordele.
 Willis, J. L., Columbus.
 Williams, Geo. W., Dublin.
 Yeomans, M. J., Dawson.

GENERAL MINUTES.

FIRST DAY'S PROCEEDINGS—MORNING SESSION.

WARM SPRINGS, GA., July 3, 1902.

The Association was called to order by President C. E. Battle at 10 o'clock A.M.

The President: The first business in order is the report of the Executive Committee, Col. A. R. Lawton, Chairman.

Mr. Lawton: The program has been tentatively arranged and has been distributed to all the members of the Association and copies are on the Secretary's desk if any should desire them. The days of the week have all been postponed one day; the program as printed for Wednesday becomes the program for Thursday, and as printed for Thursday, the program for Friday, and so on. This program is subject to change. A change has already been found necessary, and the Executive Committee therefore only announces the program for the day and will take up this afternoon the program for subsequent days. We have endeavored to change it as little as might be necessary in order to suit the convenience of the Association.

We have first the address of the President, which will be followed by the formal report of the Executive Committee, this being merely an announcement. Then the election of members and the report of the Treasurer. Next on the printed program is the report of the delegates to the American Bar Association by Mr. Merrill of Thomasville, but he is not here and that feature for the present will have to be omitted. Also the report of the Committee on Memorials and the review of the work of

the State Bar Associations for the past year by the Secretary. The Secretary will give that review this morning instead of this evening. The report of the Committee on Memorials will be presented this evening. Action on the memorial of the Medical Association on the matter set out on the program will be had this morning. There will be no afternoon session this day. The Association will meet at 8:30 this evening, and will then hear the report of the Committee on Memorials, and the address of Walter B. Hill, LL.D. That will complete the program for the day.

The President: Next in order is the address of the President.

President Battle then read his address. (See Appendix A.)

The President: Next is the full report of the Executive Committee by A. R. Lawton, Chairman.

Mr. Lawton: At the conclusion of what I shall say on behalf of the Executive Committee I will get the Secretary to read that part of the report that refers to membership,—the names of the members elected to the Association during the recess of the Association under the powers conferred upon the Executive Committee.

The Executive Committee has thought it important to call the attention of the Association to the fact that there have been a great many matters, which, in the opinion of the committee, are matters of importance, and which at any rate have been the subject of much intelligent and earnest labor on the part of the members of the Association and its committees, which have been brought before the Association with special recommendations, but have been allowed from the date of their birth to sleep the sleep of death. In other words there has been no action taken on subjects referred by the Association to committees on which those committees have reported and which reports contain recommendations. The committee has

undertaken to make no formal recommendation on this matter, but would like to direct the attention of the Association to the fact that the subjects to which I am about to call attention have been brought before the Association and have not been acted upon. The list does not include any of those which have been acted upon or a great many others which were of much interest at the time, but which have ceased to be of interest perhaps.

Some of the recommendations have been made more than once by different committees. The recommendations made by the several committees last year have not been included in the list because this committee has taken steps to have them all brought before the present session of the Association.

RECOMMENDATIONS OF COMMITTEES UPON WHICH NO
ACTION HAS BEEN TAKEN BY THE ASSOCIATION.

REPORT FOR 1887.

By the Committee on Jurisprudence and Law Reform,
W. H. Fleming, Chairman.

That laws on the subject of supplementary proceedings against judgment debtors be enacted.

REPORT FOR 1889.

By the Committee on Jurisprudence and Law Reform,
Julius L. Brown, Chairman.

That municipal charters be made uniform for cities of the same classes and be granted under general laws.

REPORT FOR 1892.

By the Committee on Judicial Administration and Remedial Procedure, J. H. Lumpkin, Chairman.

That when a wife lends money to her husband a statement of such loan, giving the amount, date and terms, be recorded in the Clerk's office in the same way that mortgages are recorded.

REPORT FOR 1893.

By the Committee on Judicial Administration and Remedial Procedure, James Bishop, Jr., Chairman.

1st. That Court stenographers be paid fixed salaries instead of fees, and be required to report all cases.

2d. That appearance terms be abolished.

3d. That judges of the Superior Courts rotate from circuit to circuit in holding courts.

REPORT FOR 1894.

By the Committee on Jurisprudence and Law Reform, George Hillyer, Chairman.

That the judges of the Superior Courts rotate from circuit to circuit.

REPORT FOR 1895.

By the Committee on Grievances, Washington Dessau, Chairman.

That the laws on the subject of soliciting suits against corporations for damages be amended and made more stringent, and that such laws be given in charge by the court to the grand jury.

REPORT FOR 1896.

By the Committee on Judicial Administration and Remedial Procedure, George Hillyer, Chairman.

1st. That the Supreme Court be given the right to enter summary judgment in any case without writing an opinion, or to discuss in the opinion only the leading question in the case.

2d. That the entire law of incriminating evidence be revised.

3d. That new trials be granted upon oral motion, and that a written motion be required only in the event a bill of exceptions is filed.

4th. That the Supreme Court be given wide latitude in granting or refusing new trials where substantial justice

has been done, though some errors may have been committed.

5th. That requests to charge be submitted and argued, and the decision upon such requests be announced before the argument to the jury begins.

6th. That the State, in criminal cases, be given the right to move for a new trial and to file a bill of exceptions to the Supreme Court.

REPORT FOR 1897.

By the Committee on Judicial Administration and Remedial Procedure, R. T. Dorsey, Chairman.

1st. Greater formality in the conduct of courts.

2d. Increasing the salaries and longer terms for the judges.

3d. That the Pleading Act be so amended as to require a full statement of the facts from the plaintiff in the petition and the defendant in the answer, limiting the right of amendment and requiring a trial only on disputed facts.

4th. That where creditors' bills are filed, and in cases of like character, creditors be permitted to prove their claims by affidavit filed with the clerk, not requiring a formal intervention unless the claim is disputed.

5th. That the trial judge be authorized to divide up an equity cause so as to submit different issues to different juries.

6th. That answers, demurrers, illegalities, claims and all other papers filed in a cause be served on the opposite party.

7th. That testimony may be taken before a commissioner in any county, irrespective of population.

8th. That claim affidavits set out specifically the facts on which the claims are based.

9th. That illegalities or injunctions be filed at least five days before the date of sale of property under levy, in order to stop the sale.

By the Committee on Jurisprudence and Law Reform,
J. M. McNeil, Chairman.

1st. That lawyers defending pauper criminals under appointment by the court be paid fees.

2d. That all exemptions from jury duty be repealed.

3d. That appearance terms be abolished, certainly to the extent of allowing judgment to be taken at the first term in cases in which no defense is filed. Suggesting also as a better plan that the first Monday in each month be made a Rules Day, and requiring answers to be filed upon such Rules Day and the cause stand for trial at the next term thereafter. If no answer is filed upon the Rules Day, judgment to be entered up by the clerk.

4th. That no case be reversed by the Supreme Court upon a technicality where substantial justice appears to have been done.

5th. That the unanimity rule in verdicts be abolished.

REPORT FOR 1898.

By the Committee on Jurisprudence and Law Reform,
Pope Barrow, Chairman.

That the method of amending a section of the Code be changed so as to make such amendment more difficult, suggesting the passage of an amendment by two successive legislatures or requiring three-fourths vote of both houses.

By the Committee on Judicial Administration and Remedial Procedure, George F. Gober, Chairman.

1st. That all continuances on disputed questions of fact be discretionary with the trial judge, whose decision shall be final.

2d. That defendants in criminal cases be given the right to be sworn in their own behalf.

3d. That a motion for new trial be made *ore tenus*, and if refused, that the movant have the right to reduce the motion to writing for the purpose of appeal.

REPORT FOR 1899.

By the Committee on Interstate Law, P. W. Meldrim, Chairman.

That an appropriation of \$500 per annum be secured to be used by the members of the Commission on Uniform Laws in payment of Georgia's proportion of the expenses incurred by the commissioners.

By the Committee on Jurisprudence and Law Reform, John F. DeLacy, Chairman.

That indictments be made amendable, and the State be allowed an equal number of challenges with the accused.

REPORT FOR 1900.

By the Committee on Judicial Administration and Remedial Procedure, W. M. Hammond, Chairman.

1st. That the Pleading Act of 1893 be amended so as to require defendants in their answers to recite the substance of the paragraphs of the petition admitted or denied.

2d. That Code sections 2145 and 2146, fixing the venue of actions against insurance companies and prescribing the manner of service when there is no agent in a particular county, be repealed or amended.

3d. That separate dockets be kept for equity causes, and that particular days for their consideration be assigned.

4th. That section 1039 of the Penal Code, prescribing the punishment for misdemeanors, be amended so as to more carefully prescribe the penalty for the different crimes punishable under this section.

This is a mere résumé of these various subjects which seem to the committee to deserve some action on the part of the Association. It will be impossible for the Association at this meeting, or at any one meeting, to take up all these subjects, but the committee thinks it is its duty to call the attention of the Association to the fact that these inter-

esting subjects are before the Association and no action taken upon them.

The Secretary will please read the memorandum in reference to the election of members.

The Secretary: The Executive Committee had before it a list of thirty applicants, all of whom have been elected. This, I believe, is the largest number ever reported at the opening session of any meeting of our Association:

Oscar Reese	Carrollton
J. B. Hutchinson	Atlanta
George W. Williams	Dublin
S. C. Tapp	Atlanta
R. D. Meader	Brunswick
Julian B. McCurry	Hartwell
W. B. Hollingsworth	Fayetteville
J. J. Dunham	Buena Vista
T. E. Patterson	Griffin
Robert M. Hitch	Savannah
John E. Donaldson	Bainbridge
Arthur S. Bussey	Wrightsville
Thomas S. Felder	Macon
Thomas F. Corrigan	Atlanta
Fletcher M. Johnson	Gainesville
J. H. Skelton	Hartwell
George S. Jones	Macon
Alexander Akerman	Macon
David C. Barrow, Jr.	Savannah
U. V. Whipple	Cordele
R. Lee Moore	Statesboro
L. M. Rambo	Fort Gaines
J. R. McIntosh	Atlanta
George P. Erwin	Clarksville
J. D. Kilpatrick	Atlanta
Edward R. Austin	Atlanta
J. W. Quincy	Douglas
W. W. McDonald	Douglas
N. L. Stapleton	Dawson
Peter Preer	Columbus

The President: You have heard the report of the Executive Committee made by Colonel Lawton. What is the pleasure of the Association with reference to the report made?

Mr. Chappell: I think we all ought to understand that one reason why we have taken no official action on the matters referred to by the Executive Committee is because the entire time of the Association is taken up with very interesting papers, addresses and symposiums prepared by the committee, so that we are not left any opportunity for action upon any matter that is liable to arise. In fact, you will find no place left on the program for presenting new business before the Association. That brings me to one reason why I have taken the floor. There is a matter of not very thrilling interest that I would like to bring before the Association, which I do not think will spring any discussion. I would like now to present it, because if I do not avail myself of such an opportunity as this, I must wait very probably until the Association has disbanded. So if I am in order, I would like to offer a resolution expressing the sense of the Georgia Bar Association that the three days of grace on commercial paper be abolished. This matter has recently been called to my attention. The Bankers' Association have been trying for several years to have this change made, and have requested that I bring the matter before the Association, and I wish to do so because I think we are all agreed that the law in that respect no longer subserves any good purpose. I presume the only reason it stands upon our statute book to-day is because it has always been the law. I admit that is a very strong argument with some persons, but it would not deter me from insisting on its repeal. The majority of the States have already set their faces in this direction. I will now read the resolution I desire to offer:

The President: Will Mr. Chappell pardon me a moment? Of course I do not know what the resolution is

but no action has been taken on the report of the Executive Committee, and as I understand, the resolution does not refer to the subject-matter of the report.

Mr. Meldrim: I move the adoption of the report of the Executive Committee, that Mr. Chappell's resolution may come up.

The motion received a second, and the report of the committee was adopted.

The President: Now, Mr. Chappell, you have the floor.

Mr. Chappell: It is true, it is absolutely true, that there is absolutely no place on the program, absolutely no time in the business of the Georgia Bar Association, for presenting a matter of this comparatively small importance, and that is why, as I stated, I have intruded at this particular time.

Mr. Meldrim: Introduce it now and dispose of it. Nobody objects to it.

Mr. Chappell: I will get the Secretary to read the resolution.

The Secretary read the resolution, which was as follows:

WHEREAS, The allowance of days of grace on commercial paper has long since ceased to subserve any beneficial purpose, and has been abolished in a majority of the States of the Union; therefore, be it

Resolved, That it is the sense of the Georgia Bar Association that the same should be abolished in this State.

Resolved further, That the Committee on Legislation of this body be directed to memorialize the next General Assembly in behalf of the repeal of the law allowing days of grace.

The President: What is the pleasure of the Association as to this resolution?

Mr. Lawton: One of the matters on the program is the discussion of the Negotiable Instruments Act, and I think this very interesting subject would properly come up in that connection. I move that it be referred to the Executive Committee, with the request that it be placed as a subject for discussion in connection with the Negotiable In-

struments Act. I think that act provides for abolishing days of grace.

Mr. Chappell: If acted upon at all, I hope that it will be independent of the provisions of the Uniform Negotiable Instruments Act. It will take years and years to bring the Georgia Bar Association together on some of its provisions, and probably after this is done it will take as many more to bring the General Assembly to a similar mind. This is a matter of considerable importance commercially. The Georgia bankers have acted upon it a number of times. I have handed the Secretary a communication addressed to me in regard to the matter, stating the action of the Bankers' Association about it, and asking that we take it up before the Bar Association; and if it is to come up at any time, I would prefer that it should come up now.

Mr. Meldrim: So far as the Negotiable Instruments Act is concerned, I was on the committee that prepared that report which is to be discussed. There will be no objection to the resolution in regard to abolishing days of grace, because, while that is provided for in the Negotiable Instruments Act, it is possible that the resolution may be embodied in the form of a bill, and it is possible that we may not act upon the Negotiable Instruments Act. I move the adoption of the resolution.

Mr. Lawton: I withdraw my motion.

The President: The motion being withdrawn, the question is upon the motion that the resolution offered by Brother Chappell be adopted.

The motion was carried and the resolution adopted.

The President: The next business, so far as the Association is concerned, is miscellaneous business. Is there anything to be presented under that head?

The Secretary: At the last session resolutions were passed congratulating James H. Blount, Jr., a member of this Association, on his appointment as Judge of the First Judicial District of the Philippine Islands. I was directed

to convey those resolutions to Judge Blount, and I have from him a reply, directed to me as Secretary of the Association.

The Secretary then read the following letter:

FIRST JUDICIAL DISTRICT OF THE PHILIPPINE ISLANDS,

OFFICE OF THE JUDGE.

LAOAG, P. I., January 27, 1902.

Mr. Orville Park, Secretary Georgia Bar Association, Macon.

MY DEAR SIR:—I beg to acknowledge receipt of the congratulatory resolutions of the Georgia Bar Association relative to my appointment as judge, and to express through you to the members my heartfelt thanks for this delicate and thoughtful reminder that I have not entirely faded from the memory of the "Trustees of Public Opinion" in the State I love so well. I cannot avail myself of the kind invitation of the Association to be present at its next annual meeting during the coming summer, but I will be there at the meeting in the summer of next year, 1903, at all events, the Act of God and of the public enemy excepted.

Thanking you personally for the cordial nature of your own letter transmitting the resolutions and assuring you all that, while I may never accomplish anything out here of which you will have any special reason to boast, I shall certainly do nothing which would bring shame upon the Association, the profession or the State.

Very sincerely yours,

JAMES H. BLOUNT, JR.,

Judge First Judicial District.

Mr. Persons: I move that the President appoint a committee of five to name officers for the ensuing year; that committee to report to the Association on Saturday next. It is customary for them to report on the last day of the session.

The motion received a second and was adopted.

Mr. Lawton: The report of the Treasurer has been omitted. It is on the program for this morning but has been overlooked. I move that it be attended to now.

The President: We will hear the report of the Treasurer now.

The Treasurer: The report of the Treasurer will be very brief, and for that and other reasons he hopes that it may be satisfactory. The statement of account shows that the cash balance of the last report amounted to \$748.52; since that time dues have been collected amounting to \$975. The disbursements amounted to \$800.94, and the balance on hand is \$922.58. This is the largest balance that has ever been to the credit of the Association. The account has been submitted to the Executive Committee and the accompanying vouchers. It has been audited and approved by the committee.

(For Treasurer's Report see Appendix B.)

The President: You have heard the report of the Treasurer. What is your pleasure?

Mr. Hammond: I move that it be adopted.

The motion received a second and was adopted.

The President: If there is anything further under the head of miscellaneous business the chair will entertain any motions that may be made relative to such matters.

Next is "Action on Memorial of the Medical Association of Georgia touching the making of communications to a physician privileged, and providing for compensation for medical expert witnesses. Reports of 1899, p. 12, and 1900, pp. 85 and 91." That matter is up now for discussion by the Association.

Mr. Lawton: I find the report for 1900 is not here.

The Secretary: I have sent for it.

Mr. Lawton: I move that the report be temporarily laid on the table.

The Secretary: Here is the report.

Mr. Lawton: I withdraw my motion. Not as a mem-

ber of the Executive Committee, but as one who is interested in the subject-matter which is on the program, I desire to bring it before the Association, and in order that there may be something to act on I move the adoption of the committee's report. Briefly stated—I don't think it is necessary to read the report—the Medical Association requested the assistance and indorsement of this Association of a bill providing for the payment of expert witnesses, and for other purposes; second, of a bill entitled "An Act to render physicians and surgeons incompetent to testify in civil cases as to certain information acquired while consulting or attending a patient, and for other purposes." As some of the members will easily remember, Dr. Baird, as the delegate of the Georgia Medical Society, came to this Association here and read a paper presenting these bills and the views of the Georgia Medical Society. The matter was referred to the Committee on Jurisprudence and Law Reform. I then had the honor to be the Chairman of that committee, the other members being L. F. Garrard, Alex. C. King, Allen Fort and R. T. Fouché. The report submitted in 1900 is signed by all the members of the committee, and the committee recommended that this Association respond to the memorial of the Medical Association of Georgia by expressing its regret that, for the reasons stated herein, it is unable to give the indorsements requested. No action was taken on that report, and it seems to me that we were unintentionally guilty of a discourtesy. A sister Association has sent us a communication and we have never answered it. For the purpose of bringing up the matter, I move that the recommendations of the committee made in 1900 be adopted as the sense of the convention. I have not read the whole report, but am ready to do so, or to have it read.

Mr. Meldrim: I would like to hear the whole report if it is not too long.

Mr. Lawton: If the Association will bear with me I will read the whole report.

To the Georgia Bar Association :

The Committee on Jurisprudence and Law Reform submits the following report:

At the session of the Association in 1899 was presented a memorial from the Medical Association of Georgia accompanied by a paper which had been read before the last named Association by Dr. James B. Baird of Atlanta. The memorial and the paper were presented by Dr. Baird in person. After some discussion as to what action this Association should take, the subject was finally referred to a Special Committee, of which Hon. George Hillyer was Chairman, with instruction that the committee should act on its own responsibility without authority to commit this Association; and the Committee on Jurisprudence and Law Reform was instructed to make a full report to the Association at this session of 1900.

The object of the memorial was to obtain the indorsement of the Bar Association to proposed legislation, (1) providing for the compensation of expert witnesses in civil and criminal cases, and (2) making communications of physicians with their patients privileged and inadmissible in evidence in civil cases. The views of the Medical Association were afterwards embodied in two bills introduced into the General Assembly in 1899, which received the support of the Special Committee of the Bar Association, were reported favorably by the Judiciary Committee of the House, and met the usual fate of not being reached before adjournment. These bills are attached to this report, and are considered by your committee as embodying the legislation desired by the Medical Association.

I. COMPENSATION OF EXPERT WITNESSES.

1. The bill for the compensation of expert witnesses applies only to scientific experts. There is no good reason for this. The blacksmith who by years of experience has become an expert in horseshoeing; the farmer who has become expert on questions as to the best time for planting particular crops in particular localities, or as to the amount of labor which should be done by a given number of men in a given time; the stockman who knows

the fine points of a horse; the expert cotton classer; all these, who have acquired their knowledge as part of their stock in trade, are as equitably entitled to compensation for their opinions as are the surgeon, the chemist, the engineer, or the electrician. When we begin to legislate on this subject, we should not unjustly discriminate; and unless we do, we are apt to clog the wheels of justice.

2. Every witness is now entitled to his *per diem* of seventy-five cents, and this amount is paid alike to him whose time is worth a few cents a day, and to him whose time is worth many dollars a day. Every citizen must expect to bear willingly his part of the burden of public service, and this duty is nowhere higher than in promoting the ascertainment of truth in judicial proceedings. If there is to be discrimination in the pay of witnesses, should it not rather be based on the value of their time than the nature of the testimony? Why should the expert who is possessed of scientific knowledge be entitled to withhold it for pecuniary gain, when the ordinary citizen who has become possessed of material facts is compelled to divulge them on demand?

3. The learned professions have no claim to be exempt from this public burden. Referring only to what is most familiar to us, members of the bar are required "never to reject, for a consideration personal to themselves, the cause of the defenseless or oppressed" (Code, Sec. 4427, par. 6); to defend without compensation paupers charged with crime who may be assigned to us by the court; and to perform a like service in unrepresented divorce cases, etc., etc. Lawyers have many special privileges to offset these burdens; but the special privileges and exemptions of physicians are greater.

4. New legislation on these lines is to be avoided except where there is an evil to be remedied. This cause seems to be here lacking. Your committee is not informed that physicians are so frequently called upon as involuntary experts that they are entitled to relief by special legislation.

5. The Bar Association should not cheapen its action and its influence by giving its indorsement to any measure which does not (1) concern the bar itself or the practice of its profession, or (2) tend to benefit the general public and promote the general welfare. This legislation

cannot be assigned to either head. It concerns only the pecuniary advantage of a class.

II. AS TO PRIVILEGED COMMUNICATIONS.

The second bill makes inadmissible during the life of the patient, and no longer, the testimony of a physician as to any information acquired by communication with or examination of him, *or otherwise*, while attending him professionally, if the information is necessary to proper treatment; and it applies to all civil cases except suits for personal injury or malpractice.

1. Much criticism could be made on particular features of the bill. Why confine it to certain cases? If the patient be entitled to a concealment of the truth in these cases, is he not equally entitled to it in all? Is the right to the judicial ascertainment of the truth possessed by the State, and by the litigant in personal injury and malpractice cases, so much higher than the same right of the private litigant in other cases? Why confine it to the life of the patient? If he be entitled to preserve his reputation and his property by some concealment of the truth, should not his surviving family be permitted to similarly keep his memory untarnished and his estate undiminished? But as our objection goes to the merits special demurrer is unnecessary.

2. We repeat our observations in considering the Expert Witness bill, that the alleged evil sought to be remedied by this bill does not seem to be so extensive as to call for special legislation.

3. This Association should not, in our opinion, recommend the incorporation into our law of any further obstacles to the judicial ascertainment of the truth. As we Southerners are so thoroughly imbued with the doctrine of States' rights and other permanent and unchanging political principles imbibed with our mother's milk, that many of us have never stopped to give them a moment's thoughtful consideration and dissection, so are we Anglo-Saxons similarly unanalytical in our consideration of many of the principles and provisions of our common and statute law. Thus accustomed are we to the doctrine that no man shall be compelled to testify in his own criminal case, or to answer any question which may tend to criminate or disgrace him or his family; that confessions are

inadmissible where induced by the slightest hope or fear; to the restrictions on proof of admissions made by agents and representatives; and to the mass of the rules of evidence intended to limit the means for the ascertainment of truth within narrow bounds. This committee is not prepared to assail any of these rules or principles, but it is prepared to oppose the erection of further barriers until the necessity for them be clearly shown—so clearly that he who runs may read. No man is really wronged (though he may be deprived of what he should not retain) by the ascertainment of the truth at the instance of the commonwealth or of his neighbor who has a dispute with him, so long as the truth is material to the issues, or assists in determining the credibility of testimony.

4. Lawyers' communications with their clients are made privileged because lawyers are a part of the machinery for the redress of wrongs. The lawyer, within the scope of his employment, is the *alter ego* of his client, and if he be forced to disclose his client's affairs, the client should likewise be compellable to do the same. But your committee deems it unnecessary to defend this provision of the law, because, if its existence be a reason for further blocking the ascertainment of the truth, it should not be allowed to stand. It would be better to repeal it than to extend it.

Your committee recommends that this Association respond to the Memorial of the Medical Association of Georgia by expressing its regret that, for the reasons herein stated, it is unable to give the indorsements requested.

Respectfully submitted,

A. R. LAWTON,
L. F. GARRARD,
ALEX. C. KING,
ALLEN FORT,
R. T. FOUCHÉ,
Committee.

My motion is that we adopt the recommendations there. We ought to adopt or reject them. We certainly ought to respond to the Medical Association in some way.

The motion was seconded by Mr. Nottingham.

Mr. Sweat: I have a very great respect for the report made by that able committee, and I have no doubt that the,

perhaps, noncommittal recommendations will be adopted by this Association, but I have some very decided views upon this question, and I hardly think that this matter ought to be passed by in the manner it is proposed to be done. We have already, at the instance of Brother Chappell, adopted the resolution brought before us upon the recommendation of the Bankers' Association of this State to abolish the three days of grace on commercial papers. I think there is a very familiar relation between the learned medical profession and that of the law. All that I rise to say before this action is taken is this: It is my deliberate opinion that all communications between a patient and his physician should be sacredly guarded, and under no conditions or circumstances should testimony be permitted to be given in regard to the same in the courts. While I am in favor of pursuing every avenue that can properly be taken for the ascertainment of the truth, the truth can always be ascertained in a matter, and it is not necessary for us to invade the sanctity of the sick-room and the close relation between a physician and his patient.

As to paying for medical expert testimony, I believe that a physician occupies a different position from that of other experts, and they are the experts referred to in that report. You take physicians as a rule and they have their patients to see, and they hardly ever have any spare time. You take experts in other lines, and if they are summoned into court to give expert testimony, it is as a rule not at such a great sacrifice as when an active practicing physician is called away from his practice and compelled to appear in court and give testimony. He ought to be compensated if he comes, and as a rule those who procure that kind of testimony pay for it now, corporations and individuals. Now, so far as physicians being required to give expert testimony in all matters involving the State or public, in cases of insanity and proceedings of that sort, I think they ought to do it without any

pay. These are the views, Mr. President, I have upon this subject. Without opposing the Memorial and the provisions of the bills as presented by the Medical Association, and without indorsing the recommendations of the committee, or opposing them, I desire to express my own opinion upon this matter.

Mr. Adams: I move that the questions be divided so that they may be taken up separately. There are two distinct bills and some of us may favor one and not the other. It seems to me that we can get at it more freely by taking up the two propositions separately.

The President: You offer that as an amendment?

Mr. Adams: Yes, sir.

Mr. Lawton: I accept it as an amendment to my motion.

The President: What part of the report shall be taken up?

Mr. Lawton: The first, providing for compensation for expert witnesses.

Mr. Nottingham: It certainly ought to be the aim of this Association to do nothing that will add to the expensiveness of litigation. Litigation is already certainly expensive, and if we recommend action by the legislature which gives compensation to expert witnesses, we agree to increase the expensiveness of the ascertainment of the truth. I admire the suggestion of the learned justice of our Supreme Court that we should open the doors and open the windows and raise the roof of the temple of justice that the sunlight of truth may come in. If we are ready to add to our already expensive system for the ascertainment of the truth by providing compensation for medical expert witnesses, should we not also provide for compensation for the blacksmith, farrier, tonsorial artist and other experts? We are on a delicate subject. My own conviction about the matter, without giving any special attention to it, is that no such thing should be contemplated by this Association. We ought to seek to

reduce the expenses of administering justice. In all suits in our courts, generally, under the republican system, the administration of justice is already expensive for both parties; add compensation for expert witnesses and it will become indeed burdensome to the parties litigant. My own father was an honored member of the medical profession, and often was called from his office to give expert testimony. I think it would be indeed wise on the part of the Association to adopt the recommendations in that learned report, and to say that we will not give our voice or our aid to any measure that tends to hamper the administration of justice by making it more expensive. The medical witness is entitled to no more compensation for his testimony than any other witness or expert for giving evidence. It seems to me that the matter is eloquently and earnestly argued in the report, and further that it would be unwise to give any aid, any countenance, to anything that would add to the expense of the trial.

Mr. Alston: I move as a substitute that the report of the committee be adopted and a copy sent to the medical society.

The President: That was the original motion.

Mr. Alston: The motion was to adopt the resolutions following the report. My resolution was to adopt the entire report.

Mr. Lawton: That was withdrawn upon the adoption of the amendment to withdraw part of the report from the discussion.

Mr. Alston: I offer my motion as a substitute.

The President: The chair is inclined to think that the motion would be on the first part of the report read by the chairman, which refers to compensation for expert witnesses. The motion is on the adoption of that part of the report.

The motion was put and the part of the report read with reference to compensation for expert witnesses was declared adopted.

The President: The second part of the report with reference to privileged communications is now before the house.

A Member: I move that part of the report be adopted.

Mr. Adams: I want to say a word about that. I have a great respect for the report, but I am not in favor of it. I think that confidential communications between a patient and his physician should be privileged. The best way to look at that is this: suppose a physician should ascertain because of that relation, the confidence growing out of it, some fact about the patient that it would be extremely unfortunate to mention. He would make himself very base if he did tell it, even with the jail staring him in the face. There are questions that could be put to a physician so thoroughly sacred and privileged that he would be regarded as contemptibly base if he should answer, let the consequences be to him what they may. That being true they ought to be privileged. It has been suggested that a Catholic priest who obtained a secret at the confessional could be made to answer. I doubt that. If the priest had a spark of manhood, he would not answer, although perpetual imprisonment might follow. If he was in prison because he declined to answer, I am sure there would arise a public sentiment in favor of that witness that would unlock the doors of that prison. I think there are questions told in confidence to the physician which ought to be sacred, which the physician would by public sentiment be expected to retain inviolate. I think that sentiment is a good one. I think they ought to be protected—privileged in what they learn because of the confidential relation existing between them and the patient.

Mr. Lawton: There seems to be a great deal in what Mr. Adams has said, but the very argument he uses with reference to the physician applies not only to the Catholic priest but to the clergymen of the Protestant denominations, and applies equally well to secrets found out by

one's bosom friend, and applies to a great many other things found out in the utmost confidence, but there is no law which provides that a man shall not tell what he learned in confidence. There is no such law in civil cases. The law in regard to husband and wife is peculiar to the relations and positions of the parties. Why does this bill here except cases of tort for personal injuries and malpractice? If it is wrong to divulge these communications in one case, it is wrong in all cases. We certainly ought not to give our approval to the bill in its present form.

Mr. Sanders: There is a difference between the relations of confidential friends and physician, and patient. When a man calls a physician he calls him because it is absolutely necessary to have his help, his assistance. It is his duty to relieve suffering humanity. If he knew at the time he called him that secrets that he earnestly desired not to be divulged would as a result be given to the world, he would suffer in silence. When a man speaks to his friend he does so voluntarily.

Mr. Bishop: Much has been said about the sacredness of the relation between physician and patient. I think there is nothing more sacred than the enforcement of the law, and the administration of justice, and I therefore am in favor, emphatically in favor, of opening every possible path for the discovery of truth, for it is only by the discovery of the truth that law can be enforced and justice administered. I think the logic of the report is unanswerable, and I am heartily in favor of its adoption.

Mr. Atkinson: In my opinion communications between physician and patient should be privileged to this extent: the physician should be competent but not compellable to testify relative to communications between himself and his patient. The privilege should apply to the patient, as was ruled in the case of the attorney-at-law at the time when the attorney-at-law was competent but not compellable. The privilege was not the privilege of the attor-

ney-at-law, but was the privilege of his client. So it should be in this case. Against the protests of his patient no self-respecting doctor would testify, irrespective of the mandate of the court. He ought not to do it. He ought at least to have the privilege of silence with respect to those secrets which are committed to him during the last illness of his patient. He ought to be protected against compulsory discovery in those cases. I shall oppose the report of the committee, as it declares against the legislature making inviolate such secrets.

The question was called for.

Mr. Lawton: I will read the report again. (He reads the section of the report covering privileged communications between physician and patient.)

Mr. Adams: I don't understand the question. How are we to vote?

The President: For or against the adoption of the report. Those in favor of the position taken by the committee will vote yes.

The President put the question and a division was called for. The Secretary was appointed teller and a standing vote taken.

The Secretary: 39 for the report; 17 against.

The President: Ayes 39, noes 17; the report of the committee is adopted as to the second section.

On motion, the Association adjourned to meet at 8:30 P.M.

FIRST DAY'S PROCEEDINGS—EVENING SESSION.

The Association met at 8:30 P.M., pursuant to adjournment, and was called to order by the President.

Mr. Dessau: Before the regular business of the meeting is begun I ask permission to offer the following resolution.

The President: It will be in order, Mr. Dessau.

Mr. Dessau: I will not take up the time of the meeting

with any suggestions further than those contained in the resolution:

Resolved, That a committee of five be appointed by the President of this Association, which committee shall investigate the Torrens system and similar systems for the registration of land titles, and report the result of their work to the next meeting of this Association; and in the event this committee shall determine to report in favor of a system of registration of land titles, a bill shall be prepared by the committee, embodying their views, which shall be printed and distributed amongst the members of the Association at the expense of the Association, at least thirty days before the next meeting of the Association; and the afternoon of the first day of the next meeting is hereby fixed for the consideration of the same.

I will state very briefly that a system for the registration of land titles has received attention in nearly every State in the Union. Five States have already adopted the system, and other States are now considering it, and I think the State of Georgia should take her place in line with these advanced minds.

Mr. Adams: I second the resolution.

The President: You have heard the resolution of Mr. Dessau and the second to it. What is the pleasure of the Association.

The resolution was adopted.

The Secretary: Mr. President, a letter has been handed to me, addressed to yourself as President of this Association, which I now read:

"The American Congress of Tuberculosis, which was organized with the assistance of the Medico-Legal Society of New York, has decided to hold or organize a World's Congress on Tuberculosis, in St. Louis, during the World's Fair in 1904.

"I am authorized to request the appointment of delegates to attend and participate in this meeting, from all Medical, Legal and Scientific societies or bodies.

"I request that the Georgia Bar Association be represented at this gathering by a suitable commission of its members, and request that you appoint, or cause to be appointed, a commission for this purpose, and suggest that you name a Chairman, Vice-Chairman, or President

and Vice-President, as you see fit to name, and a Secretary of this body, so as to get the best results.

"My experience is, that delegates appointed without this executive staff will not result in the amount of good that an organized body will accomplish.

"If this suggestion meets your approval, I will be pleased to have the assistance of your body in this work, which is fraught with so much good for suffering humanity.

"Respectfully,
"GEORGE BROWN."

The President: This letter from Dr. George Brown, who is the Secretary of the National Congress of Tuberculosis, explains itself. It seems to be the idea of the doctor that they are doing a great work for humanity, and it is desired that all legal associations, and associations of like character, shall be represented in that Congress. It is before this Association for action as to whether they will move to appoint a committee for that purpose. It is submitted to the Association.

Mr. Park: I move, Mr. President, that you appoint a commission, as requested in the letter.

The motion received a second and was adopted.

The President: Ladies and Gentlemen, and Members of the Association: It gives me great pleasure to introduce to you Hon. Walter B. Hill, an esteemed member of our Association, the Chancellor of our State University, who will address us on the History and Work of the Georgia Bar Association. (For Mr. Hill's address see Appendix C.)

The President: The next business on the program this evening is the report of the Committee on Memorials, by Mr. Harrison.

Mr. Harrison: Mr. Chairman, Ladies and Gentlemen: The By-laws of our Association require that the Committee on Memorials shall present at each session a short sketch of each member who may have died during the preceding year, and, at the same time, present a more

extended biographical sketch of any member of the profession who died in the previous years. Having been requested to fulfill that duty of the committee, I have handed to the Secretary short sketches of four members of the Association who died during the preceding year, viz.: Judge Falligant, Judge Smith, Mr. Walter Chisholm and Mr. Porter King. (See Appendix D.)

In looking over the names of the distinguished dead who were members of this Association, I find no name which appeals to me so strongly, and no one whose life and character seem more worthy of encomium than that of Nathaniel J. Hammond, and of his life I ask you now to hear a brief review. (See Appendix E.)

The Secretary read the program for Friday, the 4th.

On motion, the Association adjourned to meet at 9:30 the next day.

SECOND DAY'S PROCEEDINGS—MORNING SESSION.

The Association met at 9:30 Friday morning pursuant to adjournment, and was called to order by Vice-President Burton Smith.

The Secretary: The Executive Committee, after the Association convenes, has no authority to elect members. Members are elected on the recommendation of the Executive Committee while the Association is in session. The Executive Committee desire to recommend for election to membership the following gentlemen: J. Ferris Cann, Savannah; Dan G. Fogarty, Augusta; Wm. W. Osborne, Savannah; Dan F. Crosland, Albany. All elections are by ballot.

The Vice-President: These nominations are before the Association, put there by the Executive Committee. What is your pleasure?

Mr. Lawton: I move that the Secretary be requested

to cast the ballot of the Association for the names suggested.

The Vice-President: The chair holds that, in the absence of objection, that is a proper motion. There being no objection, the chair will put the motion.

The motion was carried.

The Secretary: I announce that I have cast the ballot of the Association for J. Ferris Cann of Savannah, Dan G. Fogarty of Augusta, Wm. W. Osborne of Savannah, and Dan F. Crosland of Albany.

The Vice-President: The ballot of the Association has been cast for the gentlemen named, electing them under the resolution adopted by the Association.

Mr. Lawton: The Alabama State Bar Association is in session to-day in the adjoining State, and the annual address is being delivered by a distinguished Georgia lawyer, an ex-President of this Association. I move that the Secretary be requested to telegraph the greeting and goodwill of this Association to our sister Association in Alabama.

The motion received a second and was adopted.

The Secretary: Since the report of the committee was made another member of the bar has applied for admission, and the Executive Committee have decided to recommend for membership Mr. Nathan F. Culpepper of Greenville.

The Vice-President: The Executive Committee recommends Mr. Nathan F. Culpepper.

Mr. Meldrim: I move that we take the same course we did in the other case.

The Vice-President: Is there any objection to that motion? If not, the chair will put it.

The motion was adopted.

The Secretary: I take pleasure in casting the ballot of the Association for Mr. Nathan F. Culpepper of Greenville, for a membership in the Association.

The Vice-President: Mr. Culpepper has been elected. If there is nothing further, Mr. Secretary, the chair will announce the program. Will you announce it?

The Secretary: I think it will be well to announce the program for the entire day.. (Here the Secretary read the program for the day.)

The Secretary: The Executive Committee, Mr. Chairman, desires also to propose the name of Mr. Marion Jackson of Atlanta, for membership.

The Vice-President: The name of Mr. Marion Jackson is proposed by the Executive Committee.

Mr. Lawton: I move the same course.

The Vice-President: That is, that the Secretary cast the ballot of the Association for Mr. Jackson. Is there any objection to that course? If not, the chair will put the motion.

The motion was adopted.

The Secretary: I have cast the ballot of the Association for Mr. Jackson.

The Vice-President: Mr. Jackson is elected. The program begins this morning with a review of the work of the State Bar Associations for 1901, by the Secretary. (For the paper read by the secretary See Appendix F.)

The Vice-President: The report of the Committee on Interstate Law.

Mr. Meldrim presented the report of the committee. (See Appendix G.)

The Vice-President: Next is the discussion of the "Negotiable Instruments Act."

Mr. Lawton: In order to bring the matter before the Association, I move that the recommendations of the committee as just read by Mr. Meldrim be adopted by the Association.

The motion received a second.

The Vice-President: It is moved and seconded that the recommendations of the committee as read by Mr. Mel-

drim be adopted by the Association. The motion is before the house for discussion.

Mr. Park : I do not wish to discuss the motion, but I wish to make this statement. Our Committee on Interstate Law for four or five consecutive sessions has recommended the passage of this Negotiable Instruments Act. Every member of this Association who has investigated it has recommended its passage.

Mr. Meldrim was called to the chair.

The Second Vice-President : The question is upon the report. Are you ready for the question ?

The report was adopted.

Vice-President Meldrim : The next matter is the report of the Committee on Judicial Administration and Remedial Procedure. The report is by Dean Morris.

Mr. Morris : Upon receiving notice of my appointment as chairman of this committee last autumn, I addressed a letter to the various members of the committee asking for suggestions and promising to put them in the report. I received a suggestion from one member which is in this report. Not hearing from them I took the liberty of writing this report myself. I submitted copies to the members of the committee, and it had the effect of calling forth objections from all of them. (For the report see Appendix H.)

Vice-President Meldrim : You have heard the report. What is your pleasure to do with it ?

A motion was made that the report be received.

The motion received a second and was adopted.

Vice-President Meldrim : The next matter is a symposium, "The Judicial System of Georgia." Papers by Judges Cobb, Barrow and others, followed by a discussion. I understand that is the program, Mr. Secretary.

The Secretary : Yes, sir ; that is the program.

Vice-President Meldrim : The first paper is by Judge Cobb of the Supreme Court. (For Justice Cobb's paper see Appendix I.)

Mr. Miller : I move that the Secretary be instructed to have the address of Justice Cobb printed and mailed to each member of the Legislature at least thirty days before it meets in October.

Mr. Lawton : I would suggest that as the whole matter is up for discussion on the subject, it would be better to postpone any action.

Vice-President Meldrim : For that reason the chair asks if you desire to press the motion now.

Mr. Miller : I will withdraw my motion.

Vice-President Meldrim : The next paper is by Judge Barrow of the Eastern Circuit.

Mr. Barrow : I take it for granted that it will not be disputed by anybody that our Supreme Court is at present badly overcrowded. It is not due, I feel sure, to any want of ability or industry on the part of the members of the court; but it is attributable to the immense business turned into that court from 137 superior courts, 136 meeting twice a year and one meeting three times a year, and to that is added all the city courts which have a constitutional right of writ of error to the Supreme Court. In thinking about this matter, at the request of some friends of mine with whom I have talked it over, it has occurred to me that perhaps the most practical way of dealing with this difficulty is by an intermediate court. I took the liberty of preparing a bill which I submitted to the Secretary of the Association, and the outlines of which I will briefly state. I have not reduced anything but the bill to writing, and the suggestions which I wish to make, and which I am requested to make, must necessarily and will be given in a plain sort of way.

The scheme which suggested itself to my judgment was to create an intermediate court between the city and superior courts and the Supreme Court, and it was termed in this bill the "District Court of Appeals." There were to be three of these District Courts of Appeals in this State. The first district to be composed of the counties

comprising the Eastern, the Atlantic, the Brunswick, the Southern, the Albany, the Middle, the Pataula and the Southwestern Circuits. The second district to be composed of the counties comprising the Augusta, the Northern, the Ocmulgee, the Oconee, the Macon, the Chatahoochee and the Flint Circuits. The third district to be composed of the counties comprising the Western, the Northeastern, the Blue Ridge, the Stone Mountain, the Atlanta, the Cherokee, the Rome, the Tallapoosa and the Coweta Circuits. This is as near as practicable an equal division of the State as to territory. It is not an equal division as to the amount of business, but it will be found, I think, to adjust these districts so as to give to each as far as practicable the same amount of business on account of the cities being situated so as to put at least two in one district. Now right there I diverge from a recommendation I made in the draft of the bill. As the bill was drawn these courts were to be presided over by judges of the superior and city courts alternating. I am satisfied that was a mistake. That was done to avoid the expense of the nine judges who would be new officers. It was provided in the bill that the judges of the superior and city courts alternate in presiding over that court, but in lieu of that I think it would be far better, far wiser, far more satisfactory, to have three judges appointed for each district who shall be judges of the District Court; give them long terms and let them be appointed by the Governor with the consent of the Senate. Now it was provided in this bill as to the places where the courts would sit and as to the time in which they would sit. The District Court for the first district shall sit in Savannah, Thomasville and Albany, at least once or twice in each year; that the District Court for the second district shall sit in Macon, Augusta, Columbus and Griffin, at least once, if not more, in each year; and that the District Court for the third district shall sit in Athens, Atlanta, Rome and Newnan, once in each year, if not more.

Now as to the question of relief. It is difficult, if not impossible, to give any good reason why the judgment of one court for the correction of errors occurring on the trial should be reviewed by another court for the correction of errors. If the District Court of Appeals grants a new trial in a case, the case goes back to the city or superior court, and when the new trial is finally had and the case is finally closed, it can go to the Supreme Court from the final judgment of the District Court of Appeals. Why should a case be taken from the District Court of Appeals to the Supreme Court, taking up the time and labor of the Supreme Court when a new trial has been granted by the Court of Appeals? That is one branch of business that is kept away from the Supreme Court. Why should a misdemeanor case, either where the crime charged was a misdemeanor, or the jury recommends that it be punished as for a misdemeanor, why should that go beyond one court for the correction of errors? Surely, all will agree that when a misdemeanor case has been passed on one time by the trial court and reviewed by a court for the correction of errors, the defendant must be content with the decision. Why should appeals from justice courts be reviewed three times? They are tried in the justice court, they are tried in the superior court, and when they are reviewed by the District Court of Appeals, why shouldn't they stop there? It will be difficult to give any good reason why cases originating in the justice court and taken by *certiorari* to the superior court should go beyond the District Court of Appeals where the judgment rendered in the superior court can be reviewed, and why the parties should have the right to burden the Supreme Court with a review of that case. It is tried by the justice of the peace, by a jury in the justice court, by the judge of the superior court and then by the District Court of Appeals; and why should they have the right to have the case reviewed by

three courts for the correction of errors? Why should interlocutory orders, the granting and refusing of injunctions, the granting or refusing of receivers, go any further than the District Court of Appeals until after final judgment in the case, if the case is one which is finally entitled to go to the Supreme Court? If an interlocutory order is granted, granting or refusing an injunction, or granting or refusing a receiver, it can be promptly taken to the District Court of Appeals for review, but it cannot go to the Supreme Court. Would it not be wise and money-saving to stop all interlocutory orders granting and refusing injunctions and granting and refusing receivers in the District Court of Appeals? The party would be permitted to except, to file exceptions *pendente lite* in that court, so when the final judgment is rendered, and the case is finally carried to the Supreme Court from the District Court of Appeals, the appellant could carry up all errors committed, wherever committed, whether in the district court or the superior court. Let the right of exceptions *pendente lite* be had in the district court as well as in the superior court, and then when the final judgment is rendered, when a man has no other right of trial in the superior court, he can carry up all the errors committed on the trial, provided that it is not a misdemeanor case and provided it is not an appeal from a justice court.

His honor, Justice Cobb, has told us of the mass of business that overwhelms the Supreme Court. If we stop these appeal cases, misdemeanor cases and preliminary orders, it will take away half the business of that court. But suppose it will not cut it down one-half, but cut it down one-third, there will still be enough to keep that court very busy. The number of cases has increased and will continue to increase, and in two years there will be twelve hundred cases there if the present rate of increase continues, and the court will be unable to decide them unless this District Court of Appeals or some intermediate tribu-

nal is established. If these three District Courts are held annually in the different cities in Georgia, half the business of the Supreme Court will be taken away, the burden will be taken off these judges, and they will not only be able to dispose of the cases in that court, but will be able to do justice to themselves, the lawyers of Georgia and the trial courts.

Now the provisions of the bill as to the right of appeal, as to the procedure, are simple, very simple. The case is tried in the District Court of Appeals on the original record with a brief of the evidence approved by the judge and sent to the District Court of Appeals by the clerk, and from the District Court of Appeals to the Supreme Court. There is nothing for the appellant to do except to file a statement with the court that he desires an appeal, and the record is sent up. There are no difficulties, no complications, no intricate pieces of machinery. He simply announces that he desires an appeal.

This statement is made, as I say, without having been put in shape, and without having so much as read this bill over in two or three months. It seems to me that there is practically no doubt that the establishment of these three courts in different districts respectively will relieve the Supreme Court, nor as to the necessity of that relief. One word, gentlemen, in conclusion, and I will leave the subject with others who are more familiar with its details. Judge Cobb never spoke a truer word in his life than when he said the difficulty of this question and bringing it to a settlement does not rest with the Supreme Court. It does not rest with the legislature primarily. It does not rest with the people. It rests with you and with every member of the bar in this State. (For the bill presented by Judge Barrow see Appendix J.)

President Battle resumed the chair.

The President: The next paper is by Judge Nottingham of Macon.

Mr. Nottingham: For the first time I have just learned

that I was expected to prepare a paper upon the subject now under discussion. About a month ago the Secretary informed me that to me among others had been assigned a part in the discussion of the question now before the Association. At that time I had no expectation of being able to attend, and not until an hour before I left for Warm Springs had I the least idea I could attend. What I say to you, necessarily on the spur of the moment, must be largely by way of apology. Now the attitude of shirking any duty, whether assigned or assumed, is distasteful to any one, but there is to me another position that is more distasteful still; that is an attempt or endeavor to instruct or entertain so intellectual and cultured a body as the Bar Association of Georgia without careful preparation upon the subject to be discussed. Therefore I will just say a word or two to you, gentlemen.

Several years ago, some five or six years ago, through the Bar Association, attention was attracted to the crowded condition of the Supreme Court docket. They agreed that not only were the judges of that high tribunal the hardest worked men and the most niggardly paid, but they endeavored to make the people of the State at large realize the difficulties under which the members of the Supreme Court were laboring. An addition of three members was given to the court by constitutional amendment. There has been, as shown by the admirable paper read by Justice Cobb, a rapid and wonderful increase in the number of cases taken to the Supreme Court. Since the addition of three members to that court, as I understand from the paper just read (the figures the paper has given), the average has been seven hundred cases per term; that will be more than one hundred to each member of the court. With the present rate of increase there will be twelve hundred cases within a year or two, and how are they going to hear and decide them? Why, gentlemen, such labor put upon these judges means that it is an absurdity to expect them to consider carefully—to consider

and decide each case. It is a burden that ought not to be put upon a citizen of Georgia. It is not wise. It is not just. The subject is a burning one to the judiciary of Georgia, and it is necessary for us to do something to bring about harmony and orderly methods, and to relieve the Supreme Court. The subject is a pressing one which the Georgia Bar Association has to grapple with. It involves every county within the jurisdiction of this State. The question of vital importance as I understand it, in this discussion, is incorporated in the conclusion of the subject "and to relieve the Supreme Court." The suggestion made by Judge Cobb that a committee should be raised strikes me as an admirable one. It should be appointed as early as practicable, as promptly as the President of the Association is able to appoint the committee; a committee not so large as to be unwieldy, but sufficiently small that each member may feel the responsibility of his duty. That committee should have before it the admirable paper of Justice Cobb. It seems to cover every phase of the subject. Also the paper which Judge Barrow presented, but did not read, and suggestions from all the members of the Association. That committee should be given plenary power to draw up a constitutional amendment and to recommend to the legislature anything to bring the desired relief. Now the increase in the number of cases in the Supreme Court is due to one or two natural causes, and to the increase of courts in the State from which bills of exception lie to the Supreme Court, in the last few years,—the establishment of numberless city courts. It is this policy of conferring this jurisdiction on these courts that permits the carrying up of these little 2 x 3 cases that take up the time of the learned justices. I say it is trifling with justice. It seems to me to be foolish to permit the carrying of certain classes of misdemeanor cases to the Supreme Court; cases where a man is guilty of a misdemeanor beyond a doubt, and yet he has the right to take that case through the various

courts to the Supreme Court. I was informed by one of the learned judges of our Supreme Court that they are now considering a case to decide whether or not the defendant shall pay to the plaintiff the fabulous sum of six dollars. Isn't it out of reason for that case to go to the Supreme Court of Georgia? The court over which I have the honor to preside spent two days recently trying a case involving ten dollars, by reason of the decision of the Supreme Court within the last two years taking away from the justice of the peace jurisdiction in cases of bail trover. Two days spent with two panels of jurors, costing forty-eight dollars a day, in trying a ten-dollar cow case, and that case can be taken to the Supreme Court. These little five- or ten-dollar cases under our present system are tried in the justice court before the justice of the peace, by a jury in the justice court, then by the judge of the Superior Court and finally by the Supreme Court. It does seem to me to be out of all reason.

It does seem that every member of this Association must realize that these gentlemen are overworked, and that they should have the sympathy and support of every member of this Association in the effort to bring to them the necessary relief.

The President: The next is a paper by Mr. F. A. Hooper.

Mr. Hooper did not respond.

The President: Next is the paper of Mr. W. K. Miller. (For Mr. Miller's paper see Appendix K.)

Justice Lumpkin: Would I be in order now to ask a few minutes' indulgence?

Mr. Lawton: The matter is open for discussion.

Mr. Lumpkin: I do not desire to offer a motion, nor to make a speech, but I simply wish to make a few suggestions to the Association by way of bringing down to an issue the particular business that I naturally am disposed to consider, the main part of the subject under discussion.

The President: It is directly in order. It is the subject before the Association.

Mr. Lumpkin: I will detain you but a few minutes. I do not suppose that any gentleman here will consider that I am criticizing the admirable paper which has just been presented by my associate on the bench. It tells the whole story, and so clearly and carefully covers the ground that I think it may be assumed that there is pressing need of relief for the Supreme Court of a part of the burden they are laboring under for the reasons pointed out. It would be foolish for me to undertake to add anything to the reasoning or facts stated in Judge Cobb's paper. You will readily observe at once the two central ideas; one I have just laid down, the absolute necessity of relief, and the other is the method of bringing about that relief. I do not deem it profitable for me to discuss the details of any plan or plans. I have no doubt that the bar of Georgia, with its great influence, and this great assembly solidly pledged to some plan will bring about the relief that must inevitably come. I think that paper suggests the most practical way to get at it; that is, that the President of this Association should appoint a committee; a committee large enough to represent the different phases of litigation and all the different kinds of lawyers irrespective of the business they engage in, yet small enough to be effective. The scheme, you observe, provides for the formulation of some plan, and further provides that it should be transmitted to every lawyer in the State, and gives him an opportunity to be heard on the question, and finally the committee presents some plan to the General Assembly. The Association should see to the appointment of the committee and trust to the wisdom of our President to give us the right sort of a committee. Then I appeal to that committee in advance to take this subject up at once and to enter upon its work, and when this committee formulates its suggestions and finally makes a last draft of the bill, I have no doubt that the Governor of the State, in view of its im-

portance, will call the attention of the General Assembly to it in his message, and there are many good lawyers and able men who will put this legislation through. We can go a step farther than that. It will take months to bring about the needed changes; we will have to have more or less changes in the Constitution. We can get this bill before the next General Assembly and get the Legislature to pass it, making the necessary changes in the Constitution, and then we will have to go before the people in the different counties and get them to adopt it.

Now, what I beseech you is to provide for the appointment of this committee, and I would take the liberty of suggesting that their report be printed and mailed to each member. This matter can be looked after by the committee; that they send to each member of the Legislature and to each lawyer, not only a copy of Judge Cobb's paper, but also a copy of the report of the committee and the proposed bill and amendments.

Mr. Meldrim: Before my friend finishes, I would like to ask if he has considered the question of how many should be on that committee.

Mr. Lumpkin: I had in mind several plans if they met with the approval of the bar.

Mr. Meldrim: How many? One from each congressional district?

Mr. Lumpkin: That would not be too many.

Mr. Merrill: As Judge Lumpkin did not like to make a motion, I move that the President of the Association be requested to appoint a committee as outlined by Judge Cobb in his paper, to carry out these ideas, the committee to consist of eleven as suggested.

Mr. Dessau: I desire to amend that motion. I think, Mr. President, that the suggestion to have one from each congressional district is probably wise. I had in my own mind the appointment of one from each judicial circuit. I do not know but what that would make too many, so I am rather of the opinion that one from each congressional

district would probably be better. However, I will offer an amendment. I desire to amend the motion to make the committee composed of one from each congressional district and two from the State at large, and that the President of this Association be *ex officio* Chairman.

Mr. Merrill: I accept the amendment.

Mr. Dessau: My motion, Mr. President, is that the man who will be president at the time the committee is appointed be chairman.

Mr. Nottingham: I desire to offer another amendment, which I suppose will be accepted; that is, that the President for the ensuing year appoint that committee at his leisure, and that he do so as early as practicable.

The President: Does the gentleman accept the amendment?

Mr. Merrill: Yes, sir.

Mr. Miller: I desire to offer a further amendment, and that is, that this committee be delegated power to have such information as it may deem proper to print furnished to each member of the Legislature; the bill as they finally agree on it and any other information that they think proper to distribute among the members of the Legislature; that they be delegated the right and power to have that work done.

The President: The appointment of this committee is an important matter, and the resolution should clearly define its duties. It is important that the resolution as passed be in proper shape, and if it meets with the approval of the Association, I will appoint Mr. Merrill and Mr. Dessau to draft that resolution and present it to the Association this afternoon.

Mr. Harris: I make that as a resolution.

The President: It is moved and seconded that Mr. Merrill and Mr. Dessau be appointed a committee to draft a resolution and submit it to the Association this afternoon.

The motion was adopted.

Mr. Miller: I renew my motion made earlier in the day

that the paper of Judge Cobb be printed and that the Secretary be directed to mail a copy to each member of the Legislature. I think that ought to be done; that a copy ought to be mailed to each member of the Legislature with such other information as the committee may be able to give it. I think it ought to go to the members of the Legislature with the bill read by Judge Barrow. It may be introduced at the next session of the Legislature. Whether it is the bill adopted by the committee of this Association or not, it is possible that it may be introduced, or a bill on the lines suggested by Judge Barrow, and in that event it should be before the Legislature.

Mr. Meldrim: I would suggest to my friend Mr. Miller (I agree with him fully), that if this committee is to be raised, upon that committee will devolve the duty of sending out a proper report to the members of the Bar throughout the State, as well as presenting the final result of their labors to the Legislature, and would it not be better to confer upon that committee this general duty and not confine it so exactly, but say that paper or so much of it as they may deem necessary, together with their suggestions, in the form of a report.

Mr. Miller: I will withdraw my motion.

Mr. Lumpkin: I move that Brother Miller be added to that committee with Brother Dessau and Brother Merrill to straighten out that resolution.

The President: I will add Mr. Miller to that committee.

The Secretary: As it is a quarter to one o'clock, and there are certain miscellaneous matters before the Association, I move that the remainder of the program be deferred until this afternoon.

Motion adopted.

The Secretary: The President has handed me a list of the following committees, which I will now read:

Committee on Nomination of Officers: A. P. Persons,

Chairman; Joel Branham, J. Hansell Merrill, W. K. Miller, S. B. Adams.

Committee on Registration of Land Titles: Washington Dessau, Chairman; T. A. Hammond, Warner Hill, Henry R. Goetchius, Sylvanus Morris.

Delegates to the American Congress of Tuberculosis: W. E. H. Searcy, Jr., Chairman; B. S. Miller, John W. Bennett, W. W. Bacon, Jr., W. A. Charters.

Mr. Dunham: The topic under discussion, just acted on, has reached that stage that I think we all ought to be perfectly free and not throw any bouquets at each other. We all recognize that the Supreme Court business has grown to that extent that it makes it embarrassing sometimes for the court. I am quite sure that the personnel of that court is of such a high moral character, that if they are forced to make case decisions, and not given time to give the consideration necessary to reflect credit upon their knowledge of the law and the standing of the bench, they would not hold the position. We all recognize that it is necessary to make some changes in our judicial system, and we are all willing to do anything we can, and in some way we ought to make our position known. I do not approve the motion to appoint any committee, no matter from whence, or however wise its members may be, which is delegated with power to draft a bill to submit to the representatives. They ought to make their report to the Association. The bill, when drafted, ought to be submitted to the Association. The influence of the Bar Association is very great, and if we are to preserve it we should be very cautious; so I hope that the matter will be seriously considered after the report of the committee has been made, and I think the committee should not be delegated the power to frame a bill and draft resolutions for us. Their report should be made to this body, and this body should accept it or reject it, and indorse it and advocate it before the Legislature if we accept, or modify it if we disapprove it.

Mr. Adams: When I asked when the report would be made, I thought the matter was very urgent indeed. The relief should be had as soon as possible. If we delay the matter until the next meeting of the Bar Association, we must postpone this relief until another session of the Legislature. The matter is open for discussion and we have been discussing it. I knew the delay would be great if a report was made to our next meeting, and that is why I wanted to know when the report would be made.

Mr. Dunham: I have this to say in reply. We all recognize the importance of the subject under discussion, but it is not of as much importance as preserving the influence of the Bar Association, and we should be cautious what we indorse.

Mr. Lawton: I move we take a recess.

Mr. Ellis: The Atlanta Bar adopted unanimously a resolution inviting the American Bar Association to hold its annual meeting in 1903 in Atlanta, and a number of us who are members of this Association are also members of the American Bar Association, a great and distinguished body of men, as you all know. We have reason to believe that they will probably be pleased to meet somewhere in the South. They have never had a session in the South. Indeed, it may be truthfully stated, it would have been a hard matter anywhere in this adjacent territory to give them the accommodations they would require, but Atlanta now, I believe, will afford the facilities desired. Now, I believe it is well known to you that this American Bar Association pays its own expenses. They have ample funds, and all that would be expected would be in the line of courtesy in their treatment by the persons in the locality which they visit. They met last year in the West, and for a number of years previously in Saratoga. I was appointed a committee by the Atlanta Bar to bring this matter before this Association, with the hope that if it meets your approval, you will assist us in getting them to Atlanta. I offer the following resolution:

Resolved, By the Georgia Bar Association, in convention assembled, that the invitation of the Atlanta Bar Association to the American Bar Association, to hold its session of 1903 in Atlanta, is earnestly indorsed and approved.

Resolved, That this Association will appreciate the distinguished honor of having the American Bar Association meet in Georgia, and will use its best efforts to make the coming of our brethren within our State an occasion of interest and pleasure to them.

Resolved, That the delegates appointed from this Association to represent it at the meeting of the American Bar Association be charged with the duty of bringing to the attention of said Association the action of the Bar Association of Atlanta, our approval thereof, and our earnest desire for its favorable consideration.

The resolution was adopted.

The Association took a recess until 4 P.M. the same day.

SECOND DAY'S PROCEEDINGS—AFTERNOON SESSION.

The Association met pursuant to adjournment, and was called to order by the President.

The President: At the time of adjournment we had under discussion the appointment of a committee consisting of Mr. Dessau and Mr. Merrill, to draft resolutions embodying the different motions which had been made, and the last motion was that Mr. Miller be added to that committee. There was no action taken upon that motion, and it is now the first thing in order.

Mr. Lumpkin: Mr. Miller had suggested some additions to the resolution, and I made the motion that he be added to the committee of two.

Mr. Miller: I appreciate the kindness of the judge in making that motion, but I hope he will withdraw it. I think the committee is ready with the resolution.

Mr. Lumpkin: Then I will withdraw my motion and the committee will stand as originally named.

The President: The chair understands that the committee is ready to report.

Mr. Beck: Before you enter upon the program for the afternoon, I have a resolution to submit. I would send it to the Clerk's desk, but as I have written it I had better read it myself.

WHEREAS, The election of the officers of this Association is a matter of highest importance to the Association; and

WHEREAS, If every individual member of the Association is permitted to take part directly in the election of officers, instead of electing them through a committee, it will tend to stimulate the interest of the members in the affairs of the organization; therefore, be it

Resolved, That the committee to nominate officers be relieved of the duty of selecting the said officers, and that the order of business be suspended and the election of officers be entered upon now, and that each member be permitted to vote directly for his choice for the members to fill each of the respective offices.

The resolution received a second.

Mr. Lawton: I move to lay the motion on the table.

Mr. Persons: In view of the fact, Mr. Chairman, that I am the Chairman of the Nominating Committee, I desire to say that it has been the customary way of nominating the officers of this Association, and I believe the Nominating Committee should present the names——

Mr. Beck: I rise to the point that the motion to lay on the table is not debatable.

The President: I shall have to hold that the question is not debatable.

Mr. Persons: I arise to a question of personal privilege. I know the question is not debatable. I do not understand why the motion should have been made at this time. If it is for the reason that it is thought that any member of this committee would not discharge his duty faithfully to this committee, and in that way and to that end which would best serve the interests of the Association, I wish to say that I will retire voluntarily from the committee. It has been constantly the purpose and intention of the Association to eliminate politics from this Association, and to have committees to make the nominations, to prevent any scramble for office as being beneath

the dignity of the members of the Association. I say, Mr. President, if there be any man who aspires to the office of President, or any other office in this Association, if he feels there would be any opposition to him founded on any good reason, he would not want the position, and I cannot see how any member of the Association could ask the Association to encourage a scramble before the Association, in order that he might obtain preferment, nor would he desire any of his friends to do so.

Mr. Beck: I rise to the point that while the gentleman rose upon a question of personal privilege, he has that right, Mr. Chairman, but he is entering upon a general discussion of the question, and he is not speaking to a question of personal privilege.

The President: The chair will be obliged to hold that the point made is well taken, and that Mr. Persons is out of order on a motion to lay on the table, and unless that motion is withdrawn by the gentleman who made it, discussion will be out of order.

Mr. Persons: I don't see why at this time, after the committee has been appointed, the gentleman should come in with that resolution. I would like to know the meaning of it.

Mr. Sweat: May I ask the gentleman a question as a matter of information?

The President: Yes, sir, with his permission.

Mr. Sweat: Under the order of business, unless the resolution offered by Judge Beck is adopted, a large majority of the members of this Association who are now here in attendance will have left either to-night or to-morrow before your committee of five will make their report to this Association on to-morrow, so that in order to permit the members to have a voice in the selection of the officers, is it not necessary to adopt his resolution? That is the question.

The President: Before the question is answered by the

gentleman who is now on his feet, I desire to know if there is any objection.

Mr. Beck: I object.

The President: The question is not debatable, and unless the objection is withdrawn I shall have to hold that the discussion is out of order.

Mr. Beck: I insist on my objection.

Mr. Lawton: There seems to be a desire to discuss the matter, so I will withdraw my motion to lay the resolution on the table.

The President: The motion to lay on the table is withdrawn.

Mr. Beck: Touching the merits of the resolution I shall be very brief in my remarks. The resolution ought not and cannot be construed as a reflection on any one. It is true that for a number of years it has been the custom to select through a committee the officers for the ensuing year. If the custom has to be changed, if the law has to be changed, I understand it to be one of the highest purposes of this organization to change laws and to change customs, and there must be a starting point, and I know of no particular time that would be more suitable to make an innovation upon this custom, if it is desirable that one should be made. Possibly a resolution of this nature should have been made during the proceedings of this body before the committee was appointed, but I desire in rejoinder to that to say that this committee was appointed, the motion was made at the beginning of the proceedings, and it was, I understand, without any debate and without any reflection, adopted.

The President: Would the gentleman permit the chair to interrupt?

Mr. Beck: Yes, sir.

The President: The motion was made before the Association and adopted and the committee was then appointed.

Mr. Beck: Such a motion had been the custom for some

years, and I presumed, as other members did, that unless some such action as this was taken, it would be continued. Before the idea had suggested itself in my mind in its definite shape, the idea had been suggested to me by several members of the Association that it would be well that the election should be made, so that the individual members could participate in it. I desire to urge this especial point, this idea, that it will give to the members of the Association a livelier interest in the affairs of this body to permit them to take part in the election of the officers. Especially is this true so far as it relates to the younger members of the body coming in. They cannot, or from their modesty will not, participate in the abstract questions that come before us in deference to the older members of the Bar, and with the modesty that marks all the younger members of the Bar, they leave the questions that come up here for discussion to gentlemen of more experience. If they can participate in the election of their officers they will feel a deeper interest in the Association, and instead of having the fifteen, twenty or thirty, the few who come here, if they have this opportunity to participate in the proceedings, we will see this list largely increased year by year, and I hope it will be done. It surely will not be urged by any one upon this floor that an unsuitable member would be elected president—any man who should not be put in nomination. It is surely not to be suggested, not to be urged, that this Association is concluded by the nomination of any one by a committee. Such action could amount to nothing more than nomination, and the matter would still be open and others could be brought forward for consideration. Now if the program as it is stands, permitting nominations to be made by a committee to-morrow instead of to-day, every member knows, I believe, that there will be but a handful of members to consider it; whereas if the election comes off this afternoon the entire body is here to participate in it. The resolution calls for an im-

mediate election to be entered upon, but if the change voices the sentiment of the members here, I would be glad to fix five or six o'clock this afternoon as the time when this business shall be entered upon.

Mr. Hammond: I think the trouble that seems to be in Judge Sweat's mind, as well as in Judge Beck's mind, might be entirely obviated if the committee should this afternoon make their report instead of to-morrow morning. If they don't make their report this afternoon the complaint might be made that it is not the action of the full body of the Association. The action of this committee, whoever it may nominate for the various offices, is not binding on this Association, and any member of the Association can nominate any other officer. Any member has the privilege on this floor to nominate any man for the same office, bringing it before the Association for an open vote. Mr. President, I believe that one of the highest things a man would aspire to connected with the Bar of Georgia is to be president of this Association. I believe that the man who would aspire to it and use politics to gain it, ought to be the last man elected to it. If the precedent of nineteen years of harmonious action, in which the committee reported to this Association the men they suggested for officers of it, is now to be changed because the personnel of the committee is not satisfactory to some of us, on the idea that it will bring new members into the Association, then I would hate to see such action taken for the purpose of increasing its membership. The open contention is made that it would increase the membership; so it would; but the time might come when the aspirants for these offices would not only pay the expenses the time they were there, but would pay the way of a body of politicians to control the election to one or more of these responsible offices. This I want to obviate. I believe the man to be elected to this position ought not to know that he is to be elected. He ought to be a man who didn't open his mouth as to whether or not he wanted to

be elected. It ought to be an honor bestowed, not one sought for. I am perfectly willing that the committee should nominate, and then if that nomination is not satisfactory the Association can turn it down.

Mr. Toomer: In speaking of precedents, is it not true that there is a precedent of the Association that controls the action of the committee in selecting the President of the Association?

Mr. Hammond: I don't think that I understand the gentleman's question.

Mr. Toomer: I now ask if the invariable precedent of the Association does not control the committee absolutely in such matters?

Mr. Hammond: I did not catch the force of your question.

Mr. Toomer: Isn't it true that for years and years the Association has selected the vice-president for the office of president?

Mr. Hammond: No, sir, it is not true! Only three times, and then not as a matter of precedent, was such a thing done. It ought never to be done. The idea of establishing a precedent when it comes to where a man can go up the ladder and climb to the head of the Association ought never to be a part of the Association. Mr. Chairman, the unbroken rule so far as I know, and I have been to a great many meetings and have read the proceedings of others, has been on the first or second day for some member, generally my good friend Dessau, to rise in the convention and ask that a committee of five be appointed to report on the last day, or whenever it was decided the election of officers should be had, and to eliminate all politics from the election. When has such a strange thing as this been done before now that anybody ever heard of?

Mr. Felder: May I ask a question?

Mr. Hammond: Yes, sir.

Mr. Felder: What good purpose is served by appointing this committee to nominate names when any member

has the right to nominate other names? How does that keep the matter out of politics?

Mr. Hammond: This committee is supposed to know what is best for the good of the Association. It has to nominate a president, five vice-presidents, the chairman of the Executive Committee and five members of that committee, and a secretary and a treasurer, to make a selection to the best interest of the Association, and they have no interest in the election of any man.

Mr. Sweat: May I ask a question?

Mr. Hammond: Yes, sir.

Mr. Sweat: Will the gentleman object to asking this committee to report at five o'clock.

Mr. Hammond: Oh, no. We could ask the committee to make their nominations and report to us this afternoon.

The President: Does the gentleman make that as a motion?

Mr. Sweat: No, sir, I do not.

Mr. Hammond: I move as a substitute for the motion of Judge Beck that the Committee on Nominations be continued, and that by five o'clock this afternoon they report the names of the various persons they nominate.

Mr. Beck: As the author of the resolution I cannot accede to that request.

Mr. Ellis: Those of us in favor of Judge Beck's resolution have been accused of entering the domain of politics. For myself I think that accusation utterly without foundation. All we are asking for is the personal and individual right to cast our ballot. Now I want to say that I have the greatest professional and personal respect for the President who appointed this committee, and I have the greatest respect for his committee personally. Some of the gentlemen on that committee are my warm personal friends, and I would be the last to do anything that could be considered in any fair sense a hurt to their feelings. It seems to me that if we wait until the committee reports, though all of us may differ, as was suggested,

with the prestige given their nominations there would be no nominations against it. All I want is a fair free ballot; the great American privilege of every man to cast his ballot as he chooses. I want to say one thing more, and I am done. The gentleman who in the order of things, who under the precedent and custom would be entitled to this position, has never asked me to support him. I want to say that I have known him from his boyhood; that he, like the balance of us, is not as perfect as he might be, but of fine intellect, of brave and courageous nature, and I, an old member of the Bar, am willing to sit under his dominion.

Mr. Dunham: There are quite a number of members who were not present when the resolutions were offered, and I rise to ask to have them read.

The President: As a matter of information the Secretary will read the resolutions.

The Secretary: I will ask Judge Beck to read them. The writing is not very plain.

The President: The Secretary states that he cannot read the writing of the gentleman who offered the resolutions, so Judge Beck will read them.

The Secretary: I thought I might have some difficulty, and so I took the liberty of referring it to the gentleman who wrote it.

Mr. Beck reads the resolution.

Mr. Nottingham: I certainly think that this is a matter that ought to be discussed dispassionately. There ought not to be any feeling in this matter. We are all brothers in a fraternal order, and I cannot see why there should be so much heat in the discussion of a mere matter of policy. I am championing no individual for the presidency, and have not been requested, directly or indirectly, to give my voice or my vote to any individual. I am at a loss to understand how it can be that the friend of any gentleman who asks that the nominations be held in open meeting, whereby every member of this Association has the

right to nominate and vote for his choice—how that can be suggested as going into the domain of politics. If I could see how it could be a political maneuver, I would put my voice and vote most strenuously against it, for surely when politics creeps into the Georgia Bar Association, this Association will be rent in twain, and its purposes will fail of accomplishment. I say I am at a loss to understand why the gentleman who asks the simple privilege that the nominations of the officers of this Association be made in open session and not behind a screen by a committee, why this is carrying the Association into politics. It was said of a distinguished Georgian who was prominent in politics for many years, that he was accustomed to work with small bodies and to pay no attention to the house, and it seems to me that as a political maneuver the man who wanted to use politics to boost himself into office against the wishes of the Association could more easily work upon a committee of five than upon the Association. I beg to say that I make these remarks without the least desire to reflect upon any one. I am satisfied that the committee will select some gentleman who will be an honor to the Georgia Bar Association, but I do say that it is a right, a democratic right in a republican government, for every member of the Association to make nominations and to vote for the nominees. It is true that when the committee makes its report, other nominations may be made, but when the committee makes a report it carries with it a moral weight. While I have no aspirations myself, yet I do say that when a man comes into the Association and offers for this position of President, his aspirations should be supported so long as they rest upon reason and principle, and when they do not rest upon principle and reason they should not be supported by any man engaged in a laudable enterprise. I have no feeling about this matter and no wish about it; I am championing no cause, but I believe the best way to keep politics out of the Association is to aban-

don the practice of nominating candidates by committees. There is no member of this Association from the President down who should not be regarded as eligible to fill any office for which he has the capacity. There should be one controlling question for all the members of the Association, and that is the question of his fitness for that office.

Mr. Lawton: It seems to me that we might as well discuss this question plainly. There is no use disguising matters, from what the situation is. I think every one will admit that there is but one candidate for office —

Mr. Smith: Do you mean that I am a candidate? That I have solicited votes?

Mr. Lawton: I said there was but one candidate for office. I referred to you. I thought it was openly understood that you were a candidate.

Mr. Smith: Do you mean that I have solicited votes?

Mr. Lawton: I was under that impression.

Mr. Smith: You are mistaken. I have never solicited or requested a vote. I have never spoken to any one to vote for me. I have never asked for a vote.

Mr. Lawton: I am glad to learn that I have been misinformed. I have no personal knowledge on the subject, but I understood that you were seeking the office.

Mr. Smith: Do you mean to say that I am a candidate and that I have been soliciting votes?

Mr. Lawton: I said that it was understood that there was but one candidate for office. I meant you.

Mr. Smith: Do you mean to say that I have been soliciting votes?

Mr. Lawton: You heard what I said. What do you mean, sir, by asking me these questions in this manner? I will not submit to this. I will not be browbeaten—

Mr. Smith: I have no idea of browbeating the gentleman—

Mr. Lawton: You heard what I said, sir,—

Several members rose at the same time to a point of order.

The President: The Chair will recognize no one until order is restored. The Chair will recognize no one until every one is seated.

The members were seated and order was restored.

Mr. Lawton: I understand that I have the floor to discuss the question of the resolution?

The President: The Chair cannot hold you out of order.

Mr. Smith: Will the gentleman submit to a question?

Mr. Lawton: I will submit to any question; any question which is asked which is justified by anything I have said; but I will submit to no threats, and to no question which is not authorized by anything that I have said.

Mr. Smith: I desire to ask a question, and it is not my purpose to make any threats. It was not the purpose of my question, but I desire there should be an answer. I will be obliged in justice to myself to ask if the record can be read, that I may see if I understood the gentleman's answer. I simply asked a question.

Mr. President: The Chair understood that Col. Lawton submitted to the question——

Mr. Smith: During the moment's pause I have spoken to Capt. W. D. Ellis, a friend in whom I have the highest confidence, and he assures me that I misunderstood the gentleman's remark, and that I should be satisfied with his reply. I withdraw my request to have the record read.

Mr. Lawton: To return, Mr. Chairman, to our original subject, it is a well-recognized fact, it is a reported fact—I believe I have explained the remark to the gentleman satisfactorily—that there is but one candidate. It will not do to discuss the resolution of Judge Beck on abstract grounds. The question before this Association is not whether it is advisable, in general to elect officers on *viva voce* nominations, or to have the officers as enumerated by Mr. Hammond, a president, five vice-presidents, chairman of the Executive Committee and the members of that committee, nominated by a committee; but the question is whether this Association, on a motion introduced by a

friend of a particular gentleman, because it is supposed to be to his interest, shall change it for this one time. I suppose it will not be denied——

Mr. Ellis: Will the gentleman permit a question?

The President: Does the gentleman yield?

Mr. Lawton: Yes, sir, I will.

Mr. Ellis: If a member of this Association can get a majority of the votes ought he not to be elected?

Mr. Lawton: Yes, sir. It takes up the question of the election outside of the regular understood order when the members did not know it was coming up, after the committee was appointed. When the Association comes to repudiate its precedents, not because the precedent is wrong, but because the precedent is not to the interest of a gentleman they desire to elect—when the Association undertakes to do that, then the Association is certain to get into politics. We may all run, but there are no candidates. The committee have selected a man—a man they believe to be qualified for the office of President, but I would say frankly for myself, if a member of the Association named any one in opposition, I might hesitate to see whether in all respects he was qualified for the office. It is a high office. It must necessarily be filled by a man of high standing at the Bar. He must be more than that, a man above others; he must have character and standing to authorize his elevation in an association of lawyers; he must be a man above suspicion. Again there must be harmony among the officers in order that they may work together. Action on this matter ought to be taken calmly and deliberately, and not on the spur of the moment, or maybe the excitement of our enthusiasm. If these nominations are made on the floor of the Association, a man puts in nomination some friend, and he never stops to think. A man doesn't usually want to enter a contest, and no one else accepts a nomination. You will not get the benefit of that cool deliberate action you have in the committee. It is a plan that has been followed by the Ameri-

can Bar Association for years without a single exception, and I don't think that we ought to abandon this custom of our Bar Association in the interest of any particular man.

Mr. Miller: I am one of the younger men of this Association. The first surprise to me after I had become a member was that I had no voice in the election of its President. I did not question, Mr. President, the wisdom of that right being deprived to one of its members. I do not suppose, Mr. President and gentlemen, that there are any candidates for this high office. I mean candidates as used in ordinary parlance. I presume that if there are any candidates, they are candidates in the same sense that the first Vice-President was a candidate last year, and the year before, and perhaps will be the year hence.

The President: Will the gentleman permit an interruption?

Mr. Miller: Yes, sir.

The President: The gentleman has made a remark referring to the presiding officer, in stating that he was a candidate——

Mr. Miller: I think the Chair misunderstood my remark.

The President: The Chair has not misunderstood the gentleman when he made the remark that the first Vice-President was in a sense a candidate. The gentleman must excuse——

Mr. Miller: I withdraw my remark.

The President: The Chair cannot permit the gentleman to withdraw the remark until it has been explained. The Chair wishes it distinctly understood that the presiding officer at no time, to no person, nor in any sense was a candidate for any office, and never requested or solicited a vote in that behalf.

Mr. Miller: I know what the Chair says is a fact, and I agree with the statement thoroughly. It was not the intention of myself to say that the Chair was ever a candidate, and I desire to be understood in that regard.

When I was first elected a member of this Association, the distinguished gentleman, Mr. Lamar of Augusta, was vice-president and succeeded as President of this Association; next came another honorable and distinguished gentleman who was first vice-president, Mr. Hill, and then our President, a distinguished gentleman who was first vice-president. So far as I know since I have been elected a member of the Association, there has never been a single candidate for President. When I used the expression, I said that I used it not as it is used in ordinary parlance, and I did not intend to say that any president of this Association had ever been a candidate. I say no president, and no vice-president has ever been a candidate in the sense the word is used in ordinary parlance. I simply wanted to state that so far as my observation extends, it has been the unwritten law from time immemorial that the first vice-president of this Association was elevated to the presidency; and in endeavoring to do so, I said that it was understood perhaps that every vice-president would be in a sense a candidate, without meaning that he would go and ask for a vote. I don't think—I know my distinguished friend did not do it, and don't believe that any of the distinguished gentlemen have ever done it; and I did not intend that my remarks should be construed in that light.

I started to say it occurs to me that the remarks of Judge Beck were timely, and also the remarks of Judge Nottingham, and the members of the Association, and particularly the young men, should have the right to speak and the right to vote on the question of who should be the President of this Association. I don't know that I favor any one, whether he be a candidate or not, but so far as my observation goes the first Vice-Presidents have always been elevated to the presidency of this Association; and so far as my experience has gone never have the members of this Association had an opportunity to participate in the election of a President of the Association.

Now, so far as this committee which was appointed for the purpose of nominating the officers of this Association is concerned, I will state that the Chairman of that committee is my personal friend. I have a high regard for him, and there is no man living in whom I have more confidence. He is my friend, and I think he believes and knows I am his friend, but that is not the question. I do not believe and cannot believe that any man would complain that we are politicians. I do not agree with my friend Hammond that candidates will become numerous or will ever become such before the Association. I cannot see how there can be any more politics in the convention than in the committee appointed to make these nominations. I cannot understand how any man who is a politician, as the word is used by my brother Hammond, can become a member of this Association when we have an able committee to supervise its membership. I cannot understand, nor am I prepared to believe, that anybody in this Association will ever descend to the plane of paying the expenses of a member to and from the Association, or even to paying his initiation fee. I do not believe that this body will ever admit into its membership such a man, and I believe there are very few lawyers living in Georgia to-day who could be purchased to that extent. I am in favor of the resolution because I believe to-day a man should have the right to vote for all the officers of the Association.

Mr. Brandon: I only wish to say a word or so. Mr. Lawton stated in the beginning of this argument that it was well to look at this question exactly as it is. He said, I understand, according to information he had, which may or may not be correct, that there was but one candidate for the position of president. Of course I do not know what information Mr. Lawton received. I know from the information I have received that there is no candidate, but that there is opposition to the man who may be put in nomination for president. That is the real fact. Instead

of being an effort to elect a man, the effort has been made to defeat a man it was thought was about to be elevated because certain gentlemen, from the highest motives I have no doubt, felt the same to be their privilege. Mr. Lawton makes the further point that if the nominations are made, certain gentlemen may not be prepared to vote. If I understand the situation clearly—if I am correct in what I have heard—a certain gentleman has been run for the place, and everybody is in a position to say whether he would be a proper man for the presidency as soon as the nominations are made. It seems to me that everybody has the right to vote for whomsoever he pleases. Every man has as much right to think that any gentleman nominated is a proper man for the place, as some one else has the right to think that he is not the man for the place. It seems to me to be better for the Association to submit the matter to the Association and let the members vote on it. If the man I vote for doesn't get the place, it is all right. I have no doubt that if the man I vote for gets a majority and some one else doesn't get it, it will be all right with the others. It does not seem proper to me that these five gentlemen should have the right to nominate our officers. I don't know who they are. If there is not such a full attendance as is desired, it seems to me that perhaps it would be better to fix the hour at 5 or 6 o'clock, and then at that time, for the sake of harmony and good feeling, let the nominations be made, let each man vote for his choice and let the majority decide it. That, it seems to me, would keep down feeling, which seems to be entertained by a number of gentlemen. I never heard of it until a moment ago. It seems to me that it would be well to let the motion of Mr. Beck go through and the Convention make the nominations. Something was said about the first Vice-President being made President. I have been looking it up, and that has been the custom for several years—

Mr. Owens: Three times in eighteen years.

Mr. Brandon: First in 1897, then in 1898, 1899, 1900 and 1901.

Mr. Owens: Wasn't Judge McWhorter Vice-President for two years?

Mr. Brandon: Possibly he was. That was when Mr. Akin was elected.

A Member: Isn't it true that Mr. Hill, the last President, was Vice-President more than one year?

Mr. Brandon: No, sir.

A Member: Mr. Hill wasn't Vice-President for two years?

Mr. Brandon: Here it is, I will read it. Judge McWhorter was Vice-President in 1896 and 1897. The Secretary for that year was elected President, and then the rule I speak of was put in force and has been in force since.

Mr. Akin: This question is of such vital importance to this Association that I think it ought to be considered and determined dispassionately and impersonally. The gentlemen who have spoken against the resolution of Judge Beck seem to think that it was a violation of at least the unwritten law of the Association. In the nineteen years during which this Association has been in existence, as referred to by my friend from Fulton, this by-law has remained unchanged; has remained as the law written, the law deliberate, the nineteen-year-old law of the Association:

"Nominations of candidates to fill the respective offices may be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or membership, must be by ballot. A majority of the votes cast shall be sufficient to elect to office; but five negative votes shall be sufficient to defeat an election to membership."

Mr. President, it was not the custom of this Association in its first meetings to elect the officers through nominations made by a committee appointed for that purpose. As the minutes in this published volume will show, the

first executive committee was elected by the members, and that executive committee nominated certain officers who were elected. Since that time, it is true, for a number of years, the custom has been for a committee of five appointed by the Chair to report nominations to the Association, and for a motion to be made that the Secretary cast the ballot of the Association for the nominees they have made. In other words, a custom has grown up contrary to our law, and Judge Beck's resolution is that the written law, the law deliberate, the nineteen-year-old law of this Association, shall be put in force. His resolution asks for the enforcement of the written law, and points out an innovation upon the written law; none the less an innovation because it has the precedent of some years to support it. I agree most thoroughly and heartily with all the gentlemen. I would deprecate a scramble for office in the Association. I agree most heartily with those who say that the office of President of this Association is too high to be sought for or scrambled for, but, Mr. President, I have for years thought it to be for the best interest of this Association to have the election by ballot. I have thought that it would be well to have it by ballot without nomination, and if no man was elected on the first ballot, the second ballot could be confined to the members receiving the two highest votes. I would not be afraid to trust this body with the election of its officers. Mr. President, I deprecate any feeling which may have sprung up from the bottom of my heart. Without doing so, for the fear that such a motion would be misunderstood and misconstrued, I have desired at previous meetings to offer a resolution that the precedent we have established be abolished and that we follow the law. If we think that the law is bad, let's repeal it, but repeal it in the regular way. I have spoken of no individual. I wish to say that this is a most excellent committee, most excellent gentlemen. I say it sincerely. I wish to say for our honored President that he has endeavored fearlessly and impartially

to preside. I have the highest respect for him and for each and every member of the committee, but I believe that it is for the interest of the Association that the precedent be done away with, and that we go back to the long-established, nineteen-year-old law of the Association. They were giants in those days when they voted by ballot. The distinguished and revered father of the gentleman from Chatham was one of those giants; L. N. Whittle of Macon, Clifford Anderson and our present Chancellor of the University of Georgia; and they did not have, or at least during the first meetings of the Association, such a precedent as this. I deprecate from the bottom of my heart any personal feeling in this matter. If it should continue it will divide this body into factions, and if any such division should grow in our membership, it would do the Association a great deal of harm. How many attend our meetings? I have attended for years, and I say it is not going too far to say that a little change in this precedent and going back to the law, may have the effect of increasing our attendance and membership. Not for the reasons suggested by my friend from Fulton. His judgment is in error when he thinks that railroad fare may be paid, perhaps, by parties who wish to get the members here to vote. But, Mr. President, let us return to the discussion of the question that is before this body. This is my last word upon it, and I say let us return to the written published law of the Association.

Mr. Whipple: I call for the previous question.

The President: The resolution offered by Judge Beck is to the effect that the committee to nominate officers be relieved of the duty of selecting such officers, and that the order of business be suspended and the election of officers be entered upon now, and that each member be permitted to vote directly for his choice. The resolution is before the house, and the gentleman from Dooly has called the previous question.

Mr. Merrill: What becomes of the substitute?

The President: The Chair had overlooked the substitute. With the permission of the house the Chair would like the gentleman to state his substitute.

Mr. Hammond: My substitute was that the committee should retire and make their report to the house at 5 o'clock this afternoon.

The President: To this resolution there was a substitute offered by Mr. Hammond of Fulton that the committee appointed by the President should immediately retire and make a report to the house at 5 o'clock this afternoon. That has been offered as a substitute to the original motion.

Mr. Hooper: I move that the substitute of the gentleman from Atlanta be laid on the table.

The President: The Chair will hold that the motion is not germane. The vote is to be taken on the question and the substitute cannot be laid on the table.

Mr. Beck: I rise to a point of order, the point being that on a call for the previous question the vote should be on the resolution and not upon the substitute.

The President: There having been a substitute offered before the previous question was called, the question will be upon the substitute. The question is upon the substitute offered by Mr. Hammond.

A *viva voce* vote was taken and a division called for.

The count showed 34 for and 47 against the substitute, and the substitute was declared lost.

The President: The question is now upon the resolution offered by the gentleman from Spalding.

The resolution was adopted without division.

The President: Nominations for officers are now in order.

Mr. Hammond: I wish to nominate for the office of President of this Association the Hon. Mr. Meldrim of Savannah.

The President: The gentleman offers the name of Mr. P. W. Meldrim.

Mr. Felder: I desire to place in nomination the name of Hon. Burton Smith of the county of Fulton.

The President: Mr. Felder offers the name of Mr. Burton Smith. You may prepare your ballots.

Mr. Dessau: I move that Mr. Ellis of Fulton and Mr. Hammond of Fulton be elected tellers.

A Member: I move that the gentleman from Ware be permitted to make a personal explanation.

Mr. Sweat: I wish to state for information, that the votes of some of us may be understood, that Mr. Burton Smith is now the first Vice-President of the Association, and the other distinguished gentleman, Major Meldrim, is the second Vice-President. Everybody should cast their ballots for Mr. Smith for President; then we will elect Major Meldrim first Vice-President, and we can have the pleasure of electing him President next year.

The President: The resolution is offered by the gentleman from Bibb that the two persons named, Mr. Ellis of Fulton and Mr. Hammond of Fulton, be appointed tellers.

The resolution was adopted.

A Member: I wish to ask for information: Is it necessary that one must be an active member before he can vote?

The President: The Chair will announce that every member of the Association who is not in arrears with his dues, whether an active or honorary member, is entitled to vote. It is suggested that you write your own name on the ballots so that it may be seen that the persons voting are members.

Mr. Dessau: I do not agree with the suggestion that the members sign their names on their ballots. The proper way to do this thing is to let the Secretary call the roll, and as each gentleman's name is called he shall have the privilege of walking up and voting. If there is any reason why those offering to vote should not be allowed to vote it can then be stated.

The President: Do you offer that as a motion?

Mr. Dessau: Yes, sir; I will do so.

The motion was adopted.

A recess of a few minutes was taken that the Treasurer might get his books. During the recess a number of members who were in arrears paid their dues to the Treasurer.

The President: At the time of adjournment the question was on the election of a President for the ensuing year. There have been two names put in nomination—the Hon. P. W. Meldrim of Chatham and Hon. Burton Smith of Fulton.

The Secretary called the roll and the members proceeded to vote.

When the name of Justice Lumpkin was called he made the following statement: "I have never since the Association honored me with election as an honorary member, without requiring dues of me, cast a vote on any question that came up before the Association. While I appreciate the privilege, for these reasons I will not vote. Judge Cobb entertains the same views, and for that reason he did not vote."

The ballot having closed the tellers made the count and announced the result as follows: P. W. Meldrim, 43; Burton Smith, 48.

The President: Upon the ballot cast Mr. Meldrim has received 43 votes and Mr. Smith 48 votes. Mr. Smith is declared elected.

Mr. Feider: I nominate Mr. P. W. Meldrim as first Vice-President.

The President: Under the resolutions just passed you will prepare your ballots.

Mr. Dessau: As there are no other nominations, I move that the Secretary be instructed to cast the ballot of the Association for Mr. Meldrim.

The motion was carried.

Mr. Harrison: I nominate for Secretary our present Secretary, Mr. O. A. Park of Bibb.

Mr. Beck: I move that Mr. Harrison be instructed to cast the ballot of the Association for Mr. Park for Secretary.

The motion was adopted.

The President: Mr. Park is elected.

Mr. Peeples: I nominate Mr. Z. D. Harrison for the office of Treasurer.

A Member: I move that the rules be suspended and that the Secretary be instructed to cast the ballot of the Association for Mr. Harrison.

Mr. Dessau: I object to the suspension of the rules. It doesn't require any suspension of the rules.

The Secretary cast the ballot for Mr. Harrison for Treasurer.

Mr. Merrill: I nominate Mr. A. P. Persons for second Vice-President.

Mr. Beck: I move that the Secretary cast the ballot of the Association for Mr. Persons.

The motion was adopted.

The Secretary: I cast the ballot of the Association for Mr. Persons.

I nominate Mr. W. W. Bacon, Jr., of Albany, for third Vice-President.

Mr. Beck: I move that the Secretary cast the ballot of the Association for Mr. Bacon.

The motion was carried.

The Secretary: I also cast the ballot of the Association for Mr. Bacon.

Mr. Ellis: I nominate Mr. W. M. Toomer for fourth Vice-President.

On motion, the Secretary was instructed to cast the ballot of the Association for Mr. Toomer, which was done.

Mr. Peeples: I nominate Mr. W. K. Miller for fifth Vice-President.

Mr. Hooper: I move that the Secretary cast the ballot of the Association for Mr. Miller.

The motion was carried.

The Secretary: I cast the ballot of the Association for Mr. Miller.

Mr. Hammond: I wish to nominate Mr. A. R. Lawton for Chairman of the Executive Committee.

Mr. Nottingham: I move that the nominations be closed and that the Secretary cast the ballot of the Association.

The motion was adopted.

The Secretary: I cast the ballot of the Association for Mr. Lawton.

Mr. Dessau: I desire to place in nomination Mr. T. A. Hammond for a member of the Executive Committee.

On motion, the Secretary was instructed to cast the ballot of the Association for Mr. Hammond.

Mr. Searcy: I nominate Mr. Lloyd Cleveland of the County of Spalding as a member of the Executive Committee.

On motion, the Secretary was instructed to cast the ballot of the Association for Mr. Cleveland.

Mr. Dessau: How many members are there on the Executive Committee?

The Secretary: Heretofore we have elected five members of the Executive Committee, but our by-laws provide for four elected members and three *ex officio* members.

Mr. Nottingham: I nominate Mr. Render Terrell for the remaining place on the Executive Committee.

Mr. Terrell: If the gentleman will withdraw my name I would like to nominate Mr. J. B. Burnside of the county of Harris.

Mr. Nottingham: I second the nomination.

The President: The Chair will entertain a motion that the Secretary cast the ballot.

Mr. Nottingham: I move that the Secretary cast the ballot of the Association for Mr. Burnside.

The motion was adopted.

The President: Mr. Burnside is elected unanimously. That completes the election of officers.

Mr. Toomer: I move that we strike from the record all

the debate on the resolution offered by Judge Beck and the substitute of Mr. Hammond.

Mr. Hammond: I don't believe on motion that the remarks of any member of the Association can be taken from the record unless the member agrees to it, and I wish my remarks to appear in the record.

The President: The Chair raises the parliamentary question. This Association, I believe, works under the parliamentary practice of Mr. Cushman. Any deliberative body has always the power to expunge from the record anything which will reflect on the credit of any member or the body itself. The motion is made to expunge all that follows the resolution offered by Judge Beck and the substitute offered by Mr. Hammond.

Mr. Toomer: My motion was to strike from the record any debate both on the original motion of Judge Beck and the substitute of Mr. Hammond; say from the offering of the resolution and the offering of the substitute to the action on the substitute.

The President: That is the motion and shows what is to be published and what is to be stricken.

Mr. Hammond: Ordinarily if something has been said in the convention which is out of order, remarks made that the convention or gentlemen think the man who made them ought to retract, it might be that a motion to expunge would be proper. But where a motion was solemnly made and solemnly debated, the gentlemen who dared to make a speech on the subject are entitled to have their remarks taken down in writing. I wish the gentleman would withdraw his motion. It may be that the convention would not like to have what has taken place in its record, but I think it ought to be there.

A member inquired if the motion received a second.

The President: I think it did.

Mr. Hammond: I hope the gentlemen will do me the justice to let go down what I said on a legitimate motion before this house.

Mr. Toomer: The matter is fresh in the mind of the Association; it is perhaps too fresh to leave my friend with kind feelings. In that debate were many features which were entirely out of place and which should be stricken from the record of this Association, and should not be sent in the record to the members of the Bar of this State, and possibly create an impression which was not warranted by the facts. There were many things said in the heat of that debate which would perhaps carry the impression that this committee was not fair. There were many things said in that debate, Mr. President, which smacked of unparliamentary language; there were many things said, Mr. President, which perhaps would not have been said upon deliberation, and there was nothing said that would tend to the lasting good of this Association; and for that reason, I move that the entire debate upon the resolution and upon the substitute be omitted, be stricken from the record.

Mr. Merrill: I was a member of the committee which was shut out, and I can say for myself that I only wanted to do my duty. Certain members of the Association who led the fight saw fit to strike at the President and the five members of the committee. I did not feel that I ought to get up and say anything about it. Fortunately my skin wasn't very thin and I kept my mouth shut. I succeeded in doing it then. I prefer, and I ask, contrary to the suggestion of Mr. Toomer, for my sake, as a member of that committee, that you let every syllable uttered here this afternoon be published and printed in the record, and let it stand there; and next time, when such attempts are made, let it stay there to deter them from bringing on such scenes. I have no doubt it will and has done great harm, and I say let it stay there to have a deterrent effect. Let us have it printed and face it. Have it printed and stand by it.

Mr. Beck: I move to lay Mr. Toomer's motion on the table.

The motion to lay on the table was adopted.

Mr. Beck: I move we adjourn until to-morrow.

Mr. Atkinson: I cannot be here to-morrow.

Mr. Merrill: I call for the regular order.

The President: The regular order has been set aside by reason of the debates. The report of the Committee on Legal Education seems to be next in order.

Mr. Atkinson: Mr. Chairman and Gentlemen of the Convention: I am not entirely sure that this report on legal education should not have been submitted in advance of some of the arguments presented this afternoon, but this is a matter of serious business to which I invite your attention; a matter entirely outside of the range of politics—Association politics, and one which appeals to the lawyer as a lawyer. This report has the sanction of all the members of your special committee, and I respectfully invite your attention to it. I would agree to the motion to adjourn but for the fact (and I regret myself that it cannot come up at another time) that I have official engagements that make it impossible for me to be here to-morrow. (For the report see Appendix L.)

Mr. W. K. Miller was called to the Chair.

The Chairman: You have heard the report. What will you do with it?

Mr. Merrill: I move that it be adopted with the full indorsement of the Association.

Mr. Steed: I hope the report will not be adopted in the form in which it now stands. The question of legal education is one in which we are all very much interested, and one that ought not to be treated in such a manner as to hamper the cause of legal education. The organization of the State Board of Examiners has made it practicable to have in Georgia a law school for the training of students. Prior to the enactment of that law applicants were admitted through the courts without any probation and very little preparation. That board at once enabled the law schools to raise their standard, and made it to their inter-

est to do so. It must be admitted that a better education can be obtained in law schools than elsewhere, and it ought to be the purpose of this Association to preserve as far as possible the system of legal education which has sprung up in this State in the last few years. The State Board of Examiners ought to adhere to their present course, or to make their examinations stricter than they are now. This will enable the law schools of the State to better take their position and to make their requirements stricter, and it seems to me the true remedy, the true course to be adopted, is for the Board of Examiners to raise their standard so as to require young men to prepare themselves better, or go through the law schools, as they see fit. Now the test is not the length of time it takes to go through school, for some men can prepare themselves for the Bar in much less time than others. It seems to me that the best solution for this question would be for the legislature not to interfere with the course of the law schools, but simply to let the State Board of Examiners pursue the course they are now pursuing, and it will have the effect of building up the law schools and increasing the opportunities of legal education. I am satisfied that the result will be increased opportunities for legal education in Georgia, but if the law schools are hampered unnecessarily it discourages them instead of encouraging them in their efforts and the work they are doing. That is the way I feel about it. I don't think the proposed report in its present shape will accomplish the work it is designed to accomplish in building up a higher standard of legal education.

Mr. Hooper: The only objection I have to the report submitted is that it does not go far enough. I cannot understand why the legislature in its wisdom saw fit to say that the graduate of a medical school shall stand an examination before practicing his profession; the graduate of a dental school shall be examined; those who graduate in drugs shall stand the examination before their board, and

yet, by laws enacted largely by lawyers, a man may be admitted to the bar upon a diploma from a law school without standing an examination before our State Board of Examiners. I am a friend of the law school. I am not a member of the faculty of a law school, but I am a graduate of that institution, Mercer University, and I am a member of the Board of Trustees, and I would do nothing to hurt it, but would do everything I could to help it. I cannot understand that it is any reflection on that law school to insist that its students shall undergo the examination that is taken by the boy who studies in the office of a country lawyer. It seems to be rather a reflection that they would prevent their students from undergoing that examination. I have no doubt that the students of either the State University or Mercer University—I believe Emory College has discontinued her law school—would be as well prepared to stand that examination as any one who has studied the course for two years in a good lawyer's office. Those of us who have been very much in the country where all who applied were admitted, know that more of those members of the bar came in under that practice than under the new. There are thousands of the members of the bar who have come in under the old lax system of examination who hardly knew A from B, and the pressure to make the entrance to the bar more difficult has been great. This report is an improvement. If adopted and put into the law it will be an improvement on the present system. It will be helping it on that much. I want to see the day, Mr. President and members of this Association, when no man is admitted to the Bar in Georgia until he has stood that examination. I don't agree with my friend that the examination is not hard enough. I have looked at those questions, and I am not an advocate of reexamining those who are already in. I certainly favor the adoption of that report and the cleaning out of this trash that has been coming in for so many years under our old lax system. I move the adoption of the report.

The report was adopted.

Mr. Merrill: I have a resolution to read. It was reached at the close of the morning session and was the first thing for this afternoon. I had risen to make the report when the election resolution was brought up.

Resolved, That the President of this Association appoint a committee to consist of one member from each congressional district and two members from the State at large, of which the next President of this Association shall be *ex officio* Chairman, and the Secretary of this Association shall be the Secretary of said committee, whose duty it shall be to present to the legislature by appropriate bill, either for legislation or legislation and constitutional amendment, such measures as will secure the relief of the Supreme Court as shown to be necessary in the paper read before the Association by Mr. Justice Cobb. And that whatever bill may be drawn be submitted by mail to every member of this Association and all the other lawyers of the State, calling for objections and suggestions, which shall be considered by the committee in the final draft of the bill to be presented to the legislature. And that the Secretary be authorized to send a copy of Judge Cobb's paper to each member of the General Assembly before the next meeting of the same. And that the expenses of the committee be paid by this Association.

The Chairman: You have heard the report of the committee.

Mr. Lawton: I am in favor of it, but it strikes me that it should have one further provision. The matter can not be submitted to the people before 1904, and therefore this matter should come before this Association at its next meeting.

Mr. Dessau: May I interrupt my friend a moment? It can be presented to this General Assembly.

Mr. Lawton: I understand that, but still it cannot be submitted to the voters. We have no general election until 1904, and it seems probable to me there will be no actual legislation; and I therefore offer as an amendment that the committee, unless the legislation has been enacted, report to this Association, because if you haven't got the needed legislation, you would be strengthened by having the indorsement of the Association.

Mr. Merrill: Speaking for Mr. Dessau and myself, we accept the amendment.

Mr. Adams: Here is an amendment I would propose, and the committee will probably accept it. It is apparent that immediate relief is demanded. We cannot wait for legislative action looking to constitutional amendment which has to be ratified by the people: therefore, I would submit this to the committee.

Resolved, That the committee charged with the duty of framing measures for the relief of the Supreme Court be authorized and directed to take into consideration not only the matter of permanent but also of temporary relief, and to this end that said committee take such action as in its judgment may secure by prompt and direct legislation such relief of the latter character as may be expedient, until permanent relief may be had by appropriate amendment to the Constitution.

Mr. Dessau: The committee accepts that.

Mr. Sweat: I move the resolution be adopted.

The motion was carried and the resolution adopted.

The President: The Chair announces to the Association that after the business of the afternoon is completed we will adjourn to meet at 8:30 to-night in this hall, when an address will be delivered by Judge Lurton of Tennessee.

Mr. Dessau: I desire to call the attention of the presiding officer to the fact that after the reading of a paper entitled "Admission to the Bar" no motion was made or resolution adopted to place this in the hands of a committee. At the last session of this Association this measure was committed to a committee of which Judge Spencer Atkinson was Chairman. I therefore move that the matter of this report be referred to that same subcommittee with power to act.

The motion was adopted.

The Association adjourned to meet at 8:30 P.M. the same day.

SECOND DAY'S PROCEEDINGS—EVENING SESSION.

The Association met at 8:30 P.M., pursuant to adjournment, and was called to order by the President.

The President: Members of the Association, Ladies and Gentlemen: It gives me exceeding great pleasure to introduce to you to-night the orator of this occasion. He has been famous in the United States for legal ability. He has presided for many years upon the bench and is beloved by the Bar of the Union. I introduce to you Judge Lurton, of the State of Tennessee.

Judge Lurton: Mr. President, Gentlemen of the Georgia Bar Association, Ladies and Gentlemen: I desire in the first instance to return my profound acknowledgments for this pleasure and honor from the Bar Association of the Empire State of the South. The circuit over which I have the honor to preside as circuit judge is, I have always thought, as favorably located for variety of jurisdiction and for diversity of interest among its people as any in the Union, consisting as it does of two States north of the Ohio river and two States south of the Ohio river. It cannot be added to unless your distinguished member of the Senate Judiciary Committee can find some manner in which the State of Georgia can be added to it.

Judge Lurton then delivered his address. (See Appendix M.)

The President: Is there any other business before the Association?

The Secretary: I wish to announce the program for tomorrow.

The Secretary read the program.

The Association adjourned to meet at 9:30 A.M. Saturday.

THIRD DAY'S PROCEEDINGS—MORNING SESSION.

The Association met pursuant to adjournment at 9:30 A.M. Saturday, July 5, and was called to order by the President.

The Secretary: Before we begin the regular order, the Executive Committee have acted favorably upon the application of Mr. Samuel Nisbet Evins of Atlanta, and recommend his election to membership.

The President: What is the pleasure of the Association?

Mr. Lawton: I move that the Secretary be instructed to cast the ballot of the Association for Mr. Evins.

The motion was adopted.

Mr. Merrill: I have a resolution.

Resolved, That the absence of Judge Logan E. Bleckley, one of our best beloved members, from this session of the Association has been a great loss to us all, and that we extend to him our sincerest sympathy in his recent bereavement.

The resolution, numerous seconded, was unanimously adopted.

The Secretary: Hon. E. T. Brown has been nominated for membership, and he has been recommended by the Executive Committee.

Mr. Nottingham: I move that the Secretary be instructed to cast the ballot of the Association for Mr. Brown.

The motion was adopted.

The Secretary: On yesterday the Secretary, by direction of the Association, sent to our sister Association, the Alabama State Bar Association, now in session at Huntsville, a telegram expressive of our good-will. I have this morning this telegram in reply:

"Georgia Bar Association, O. A. Park, Secretary:

"Alabama accepts with pleasure Georgia's greetings. Returns best wishes for pleasant meeting. Georgia's son,

our orator, by his learned and brilliant address, reflected honor on his State and her Bar.

“ALABAMA STATE BAR ASSOCIATION.

“ALEX. TROY, Secretary.”

The President: The telegram is read for the information of the Association. The first regular order of business is the appointment of the Committee on Legislation. The Secretary will please read the committee.

The Secretary read the names of the committee as follows:

John D. Little, Chairman; Henry C. Peeples, W. M. Toomer.

The President: Next is the appointment of delegates to the American Bar Association.

The Secretary read the names of the delegates to the American Bar Association as follows:

Thod A. Hammond, Chairman; Geo. W. Owens, W. D. Ellis. Alternates, F. A. Hooper, Reuben Arnold, Marion Harris.

The President: On yesterday a resolution was passed by this body looking to the appointment of a committee for the purpose of preparing legislation for the relief of the Supreme Court. The Chair was under the impression that the duty of appointing that committee fell upon the incoming President, but a reference to the resolution reveals the fact that the appointment is to be made by me. The resolution calls for one member from each congressional district and two from the State at large. The Secretary will read the names of the committee.

The Secretary read the names of the committee as follows:

State at Large: Washington Dessau, Macon; J. H. Merrill, Thomasville.

First District, Sam. B. Adams.

Second District, Arthur Gray Powell.

Third District, E. A. Hawkins.

Fourth District, T. J. Chappell.

Fifth District, Hoke Smith.

Sixth District, M. W. Beck.

Seventh District, John W. Akin.

Eighth District, J. B. Park, Jr.

Ninth District, W. A. Charters.

Tenth District, W. K. Miller.

Eleventh District, John W. Bennett.

Ex officio, Chairman, Burton Smith.

Ex officio, Secretary, O. A. Park.

The President: We will hear the report of the delegates to the American Bar Association, Mr. Hansell Merrill, Chairman.

Mr. Merrill read the report. (See Appendix N.)

The President: Next is a paper by Mr. R. C. Alston. (For Mr. Alston's paper, see Appendix O.)

The President: Next is the report of the Committee on Legal Ethics, C. P. Steed, Esq., Chairman.

Mr. Steed presented the report of the Committee on Legal Ethics. (See Appendix P.)

The President: Next is the report of the Committee on Jurisprudence and Law Reform by Mr. Merrill.

Mr. Merrill read the report of the Committee on Jurisprudence and Law Reform. (See Appendix Q.)

Mr. Nottingham: I move that the report be adopted and that the Committee on Legislation be instructed to prepare a bill in accordance with its suggestions.

The motion was adopted.

Mr. Hammond: I thank the Chair very much for having appointed me on the Committee to attend the American Bar Association to meet in Saratoga in August. I know that it will be impossible for me to be there, and I know the importance of having a committee there for the purpose of inviting the Association to meet in Atlanta next year. While I may be near Saratoga, and if so I will avail myself of the privilege of going there, I would suggest to the Chair that the best man of all the politicians I know of would be the Chairman of our General Demo-

cratic Committee, who, I understand, will be in that neighborhood, and I would ask the Chairman to substitute his name for mine.

The President: The Chair was careful in making up the committee and was informed that the gentleman would probably attend, and that, in addition to the fact that the Chair was anxious he should go, led to the appointment. Of course if the gentleman cannot attend, and the Chair agrees with him that a delegation ought to be there, the Chair will accept the suggestion and appoint Mr. Brown.

Next is the report of the Committee on Grievances. Mr. Little is the Chairman of that committee.

The Secretary: I don't see Mr. Little in the room, though he has been in attendance on the Association. He wrote me a few days ago, asking if anything had been referred to that committee. Nothing has come to the Secretary's office requiring action by the committee.

The President: I understand that nothing has come before that committee.

Mr. Ellis: In reference to this appointment to the American Bar Association. I am almost sure that I cannot go. I thank the Chairman very much for the tender of the position, but I would like very much to offer Mr. W. A. Wimbish as a substitute, because I know he expects to go. He is a regular attendant and will be in Saratoga at that time. The business will be such that both of us can not be away at the time. If I go at all, it will be as the representative of the Atlanta Bar Association to present the invitation from that Association.

The President: The Chair understood the importance of having a representation present on account of the invitation of the Atlanta Bar Association to the American Bar Association, and appointed two gentlemen from that city. Is it the pleasure of the Association to relieve Mr. Ellis from his appointment? He has stated that it is not probable that he can go

Mr. Ellis : I am a member of the American Bar Association.

The President : The Chair understood that you were a member of the American Bar Association. If there is no objection Mr. Wimbish will be appointed.

The Secretary : The Executive Committee, through Col. Lawton as Chairman, on the opening of the session, brought up a number of matters that have been suggested from time to time by our committees as proper subjects for consideration. No action has been taken on any of these matters during the present session, for the reason that we have had no time to act upon them. At the same time, many of them should receive attention, and I therefore move that these matters to which attention has been called by Col. Lawton be referred to the Executive Committee, that committee to select from them such as are in its judgment most interesting and important, and to bring them before the next meeting of the Association in such manner as it deems advisable.

The President : The Chair thinks the motion most advisable. Is there a second to it?

The motion was seconded and adopted.

Mr. Lawton : I move we adjourn *sine die*.

The motion was adopted and the Association adjourned.

APPENDIX A.

THE GEORGIA-TENNESSEE BOUNDARY DISPUTE.

ADDRESS OF THE PRESIDENT,
CHARLTON E. BATTLE,
OF THE COLUMBUS BAR.

That Georgia is a great State, great in population, in resources, in its advancement, and in its governmental conditions and relations, none can question ; that she is at peace and harmony with the Union and with her sister States is likewise true. Her century and three-fourths as a colony under royal grants, and as a State forming an integral part of this Union, has brought to her people the blessings of a fruitful soil, the honor of great names, the blessings of peace, happiness and good-will—a contented people—a great people.

While our State is now at peace with all the world, it was not always so. It has in the past been her unfortunate lot to be in dispute upon her boundary and territorial rights almost from the date of her birth and baptism as a colony. These disputes began with South Carolina, a sister province, and out of whose territory she was carved ; were finally extended to the mother country, were followed by a misunderstanding with the Court of Spain, then a renewal of differences with South Carolina, then with the United States, and finally, with the State of Tennessee, which State was carved in 1796 out of the cession by North Carolina to the Federal Government. With this latter State there is still a friendly dispute which has lasted for nearly a century, and is still the subject-matter of reciprocal legislation upon the

part of both States. Indeed, Georgia has, within the last few years, by appropriate legislation, caused a partial investigation to be made into the boundary line dispute between this State and the State of Tennessee. Reciprocal action was sought before the legislature of that State, which was in part successful and will hereinafter be noted.

For a long number of years it has been a matter of history that grave doubts have existed as to the true northern boundary of our State ; indeed, it has become almost a tradition that a part of Georgia's soil is wrongfully under the jurisdiction and control of the State of Tennessee, and it has brought about some confusion and trouble to those living upon the supposed border line.

During a short tenure of service in the legislature of our State I became interested in this question to some extent, but for lack of opportunity did not pursue the investigation. Others likewise became interested and pushed the investigation further, and from this latter investigation I became, in some way, impressed with the idea that the matter should be fully run down, and if any doubt existed as to our true northern boundary it should be set at rest once and forever ; if any part of our territory had been impressed as a part of the territory of Tennessee and subject to its jurisdiction, it should be reclaimed. In any event, I was hopeful that this investigation might, at least, be the means of quieting the legislative mind, which has for some time in the past been at labor on this question, with the possible view upon the part of our State of bringing this question to a final determination by original proceedings in the Supreme Court of the United States. I was, as stated, hopeful, in fact believed, that Georgia would be brought to the necessity of taking such steps for her protection, and that it would be the means of adding a considerable territory to her already immense domain. I confess that it would have been to me an exceeding great pleasure to have aided in establishing this supposed right, but I am constrained to confess that my recent investigation has, at least,

convinced me that this State is without any legal right or remedy to claim any extension of her northern border.

Having gone thus far, it becomes necessary to trace the history of our State and its boundary. I shall try to confine myself to our northern boundary, which is the immediate subject under discussion, and I refer especially to that part of our northern boundary which is adjacent to the State of Tennessee. To do this it may be necessary to refer briefly to the early and succeeding history of the Carolinas, as well as to the history of our own State.

The original grant of land by the British Crown to the territory in question of which our State now forms a part was to Sir Robert Heath. This grant, however, for some reason, became a lapsed grant, possibly for non-user or otherwise. Then Charles the Second, king of Great Britain, by charter dated the 24th day of March, in the fifteenth year of his reign, granted to eight persons therein named as "Lords Proprietors" thereof, "all of the land lying and being within his dominion of America between 31° and 36° of north latitude, in a direct west line to the South Seas, styling the lands so described the province of Carolina." On the 30th day of June, in the seventeenth year of his reign, the said King Charles the Second granted to the said Lords Proprietors a second charter enlarging the boundary of Carolina, that is, from 29° of north latitude to $36^{\circ} 30'$, and from those points to the seacoast west in a direct line to the South Seas. These grants made such parties proprietors of the soil, with full ownership and authority in such donated territory. After several years of hardship and conflicts with the Indians and settlers, and having grown weary of the struggle, seven of these Lords Proprietors, or owners of Carolina, surrendered to the King of Great Britain on the 26th day of July, 1726, all their seven-eighths interest in the province of Carolina. One of the proprietors, Lord Carteret, reserved his one-eighth interest in said province, which was subsequently made good to him by a grant of territory in North Carolina, after Carolina was

divided into North and South Carolina, in 1732. This eighth interest of Lord Carteret's was by him deeded and conveyed to the commissioners named as trustees for the province of Georgia, in 1732. Upon the surrender by the Lords Proprietors of Carolina, the same was accepted by the King and confirmed by Parliament. The province of Carolina from that moment, instead of being the property of individuals, became a royal province and subject to sale, gift, or such other disposition thereof as the Crown or reigning monarch might desire. After the surrender of proprietary rights, King George the Second, in 1732, divided the province of Carolina into two parts, calling one North and the other South Carolina. The dividing line has been thus described: "By line beginning at the north end of Long Bay and running thence northwest to the latitude 35, and thence due west to the South Sea." It will here be noted that thus early latitude 35 became the dividing line or the point on the east at which the States began their stretch westward to the South Seas, or the Mississippi River.

Shortly after this King George the Second, by letters patent, bearing date June 9th, 1732, constituted or erected James Oglethorpe, Lord Percival and others into a corporation under the title of the "Trustees for establishing the colony of Georgia in America," granting to them the following territory, to wit:

"All those lands, countries and territories situated, lying and being in that part of South Carolina, in America, which lies from the northern stream of a river there commonly called the Savannah, all along the seacoast to the southward unto the most southern stream of a certain great water or river called the Altamaha, and westward from the heads of said rivers respectively in direct lines to the South Seas." This grant covered all the territory within the boundaries named, and the islands of the sea on the east within twenty leagues from the coast.

Notice of this grant to the Trustees of Georgia was given by King George the Second to Governor Johnstone of South Carolina, out of whose territory the Georgia province was thus carved.

Georgia, under the grant, was erected into a province, and power was given to the Trustees for twenty-one years to frame laws and regulations for its government, after which period all the rights of soil and of jurisdiction should vest back into the Crown. Oglethorpe, under this charter, and representing the Trustees named in the royal grant, took possession of the territory, made many settlements, held treaties of peace with the Indians and carved out the beginning of Georgia's history, her greatness and her fame.

Faithful to the trust reposed, he lived up to the standard set, and he, together with the other Trustees named, in 1752 surrendered their charter to the Crown. From thenceforth Georgia became a royal province. This surrender was for the seven-eighths interest conveyed by the Crown in 1732, and for the one-eighth interest conveyed in the same year to the Trustees by Lord Carteret. Copies of this surrender of title are certified to by Mr. George Chalmers of the "Office for Trade," Whitehall, from the royal records. This "Office for Trade" appears to have been the clearing house for all colonial transactions, of which strict records were kept.

Subsequent to the surrender of charter grants by Georgia Trustees, King George the Second, on August 6th, 1754, issued a commission to John Reynolds as Captain-General and Governor-in-Chief over the same identical territory as that contained in the grant to James Oglethorpe and other Trustees.

On May the 4th, 1761, King George the Third commissioned James Wright as Captain-General and Governor-in-Chief of the Colony of Georgia, the commission covering the same identical territory as that previously granted to Oglethorpe and other Trustees, and to Reynolds as Governor, except that the southern boundary was extended from the Altamaha to St. Mary's River. About this period, to wit on June 26th, 1764, George the Third issued a commission to one William Gerard deBrahm, as Surveyor-General of the southern district of North America, with instructions as to surveys desired to be made by the Crown,

including the boundaries of the Province of Georgia. In this survey Georgia's territory was given as lying between latitude $30^{\circ} 26' 49''$ to latitude $35^{\circ} 30'$ —the north boundary being, according to that survey, $30'$ north of that now claimed by our State.

Thus matters stood until the British colonies, including, of course, Georgia and South Carolina, in 1776, dissolved their connection with the mother country, setting themselves up as independent States, and waged, with the other States, the fierce and bloody war of the Revolution. This war, of course, made this a free and independent country. The States each became a sovereignty, each equal in domain, quite, if not nearly so, to the home of the mother country. Thirteen sovereignties—thirteen independencies—thirteen empires—owing no allegiance save to self, and no imposed duty save the self-imposed reliance upon each other as the community of interests might suggest.

Let us pause for a moment and consider what the result would have been in the future—at the present time—had each of these separate States set up an independent sovereignty or kingdom. It is not pleasant to an American mind to consider, and yet, what was there to hinder it? No one State had authority or control over another. The central head, the sovereign, the king, was deposed from this territory and hemisphere. It was indeed fortunate that these people and these colonies, or to more correctly speak, these independent States, in a spirit of protection and of freedom from royalty, had no desire to continue a monarchical form of government, and thus came together and established a central government of their own design, each yielding a part of its governmental powers to this central or federal government, yet each retaining unto itself the power to control and manage its own internal or intra-state affairs. From this compact came union—union of States, union of interests, and union of purpose; from this compact came a country even great in its infancy, greater still in its growth and progress, and incomparably great in its present proportions and governmental

conditions and relationships, in its position among the great nations of the world, in peace, in war, in commerce, and in its remarkable industrial progress.

One of the powers given to the Central or Federal Government, in the afterwards adopted Articles of Confederation, provided that one sovereign State could sue another sovereign State before the newly born Congress of the States, and from this doubtless arose the present constitutional provision granting to the Supreme Court of the United States original and exclusive jurisdiction of suits in behalf of one State against another, and it may here be said that no such condition anywhere else exists, and it is peculiarly in, of and for America.

For the purpose of this paper it is sufficient to say, however, that when the colonists broke their allegiance from the Crown, each erected itself into an independent State, an independent sovereignty, and agreed that each should hold jurisdiction and territory according to its former limits and Crown charter, each possessing just what in soil and in territory was within its borders, with the same boundaries as existed prior to the dissolution of their connection with the Crown. With some of the States it became a serious question as to these boundaries, and disputes frequently arose.

All the States did not readily agree to each of the other States retaining its original territory however, when the Articles of Confederation were to be adopted. Some of the States had immense territory, including a great extent of unsettled country. These were Massachusetts, Connecticut, New York, Pennsylvania, Virginia, North and South Carolina and Georgia, while the States of New Hampshire, Rhode Island, New Jersey, Delaware and Maryland possessed but a limited unsettled territory. These latter States contended that the unsettled lands should be considered and held as a common property for the benefit of all the States, and should be considered and used for their common good and interest. Indeed, some of the latter States refused to consent to a union of States until those which possessed

the most extensive limits should relinquish a part of their unsettled territory for the use and benefit of each and all of the States in common.

In 1777 the matter was brought up in the Colonial Congress, and by discussion and debates looking to the adoption of the Articles of Confederation. Virginia refused to cede any part of her territory, and Maryland thereupon refused to enter and form a part of the confederacy without such concession. It looked for a while that the hoped-for union of States would not be brought about, and thus matters rested for quite awhile, each State holding itself unto itself and by and for itself.

In order, finally, to bring about the much-desired union and compact of States, and to effect the signing and adoption of the Articles of Confederation, the State of New York paved the way to an amicable adjustment by ceding a part of the territory that she claimed on her west. It is true that Mr. Hildreth, the historian, and one of repute and accounted accurate as to facts, says that this claim upon the part of New York was of the vaguest and most shadowy character. This was in February, 1780. Connecticut followed in the same year and ceded part of her territory. Then, on December 30th, 1780, the Virginia Legislature ceded all of her territory northwest of the Ohio River, but on the condition that she should retain Kentucky. This cession finally brought Maryland into line, and the Articles of Confederation were then ratified, leaving all of those States which had made no cession of territory in the quiet possession of the soil contained and embraced in their ancient limits. Thus, Georgia was possessed of all those lands granted by the Crown, and refusing to cede any part of that territory, on February 7th, 1783, passed an Act establishing her boundary limits in the following language: "That the limits, boundaries, jurisdiction and authority of the State of Georgia do and did, and of right ought to, extend from the mouth of the river Savannah, along the northern side thereof and up the most northern stream or fork of the said river, to its mouth or source; and from thence

due west across to the river Mississippi and down said stream of the river Mississippi to latitude 31° north." (Acts State Legislature, Feb. 3d, 1783, Sec. 13.)

The Savannah river was formed by the confluence of the Keowee and Tugalo rivers; the Tugalo was the bolder stream, and discharged the greater water, but the Keowee was the longer and reached a latitude farther north. It was the head source of the Keowee that Georgia claimed as the beginning of her northern boundary, the point at which her northern boundary began its westward stretch to the Mississippi River. This contention on the part of Georgia brought about the dispute with South Carolina, and at this point Georgia's boundary troubles began in earnest.

It would appear that when, according to the claim of South Carolina, the Province of Carolina was divided in 1732 into North and South Carolina, that South Carolina became possessed of, or rather claimed, a strip of land lying between North Carolina and Georgia from twelve to fourteen miles wide and about four hundred miles long. This claim upon her part was made in construing Georgia's charter from the Crown. She contended that Georgia's northern boundary began at the fork or confluence of the rivers Tugalo and Keowee and where those rivers lose their respective names and the river Savannah begins. Georgia's claim, as heretofore stated, was the head source of the most northern of these streams forming the Savannah River. The several grants and cessions to Georgia, her Trustees and Governors in Chief, certainly confirm the claim thus made by our State, and so did Mr. Chalmers of the "Office for Trade," the colonial place of registry in London of all royal grants and charters and commissions with reference to the American colonies. In a letter by him under date of September 25th, 1795, addressed to Samuel Bayard, Esq., and in answer to questions propounded at the instance of Mr. Attorney-General Bradford concerning the boundaries of South Carolina and Georgia, after going into detail as to the several descriptions of

the several grants, he says: "There are no documents which can show the heads of the rivers Altamaha and the Savannah to be other than the charter and commissions make them to be, as I have already shown. Every document proves that the heads of those rivers were not at the fork of the Altamaha where the Oconee and Ocmulgee met, nor at the junction of the Tugalo and the Keowee, but at the head of the northern stream of the one, and the head of the southern stream of the other." In another place in the same letter he says: "Georgia was settled upon the very principle of being a southern frontier to South Carolina. The northern stream of the Savannah river was virtually made the southern boundary of South Carolina." This letter appears in the publication entitled "American State Papers and Public Laws," Vol. 1, folios 65 to 66, for the years 1789 to 1809.

This twelve-mile strip, which was claimed by South Carolina, was located on the northern boundary of Georgia and was then claimed by both States; South Carolina, as stated, claiming it, under the division of Carolina into North and South Carolina, and that Georgia's northern limit was at the fork or confluence of the two rivers named. Thus, as stated, the dispute arose between these two States. It does not appear, however, that South Carolina, at any time, set up this claim from 1732 until the suit hereinafter referred to was instituted by her in Congress, about fifty-three years after Georgia, as a province, was erected under royal grant out of South Carolina's territory.

Under the 9th Article of the Confederation of the States was provided the manner in which one independent State could sue another, with reference to their boundary rights. Such suit should begin by petition in the name of the litigant State to Congress, and a federal court should be provided to hear the cause and determine the question in dispute. Under this 9th Article of Confederation, South Carolina, by and through her agents and representatives in Congress, filed suit against the State of Georgia in Congress on June 1st, 1795. (Journal

United States in Congress Assembled, Vol. 10, folios 189, 190, 191, 192.) Notice of this suit was given to Georgia by the Secretary of Congress, and the second Monday in May following was set for Georgia to appear and answer, but it was not until September of that year that the answer to such suit was filed in Congress, and it was therein asserted and announced that South Carolina had proposed an amicable adjustment through commissioners to be appointed from both States. She, however, submitted herself to the will of Congress. The court to try the cause was named by Congress in the following manner: The names of three persons from each of the thirteen States were enrolled, and from the list thus composed each litigant alternately struck one name until thirteen were left. The names of these thirteen were then placed in a box and nine of them were drawn out by lot. This nine composed the court to try the cause, and the third Monday in June, 1787, was fixed for the court to hear the case in New York.

As set forth in the answer of Georgia in Congress to the suit of South Carolina, the latter State had proposed a joint commission of the two States to amicably adjust their boundary limits, both on the north, east and south. The convention was agreed upon by both States, South Carolina naming as her commissioners Charles Cotesworth Pinckney, Andrew Pickens and Pierce Butler; Georgia named as her commissioners Lachland McIntosh, John Houston and John Habersham. In the archives of the Secretary of State's office will be found the very interesting correspondence between Georgia's then Governor, George Matthews, and her commissioners, and between the commissioners of the two States, arranging for the preliminaries of the convention, and the final report of their proceedings. The Georgia commissioners had full, plenary powers, and by agreement the convention met at Beaufort, South Carolina, on April 24th, 1787. The commissioners of both States presented their credentials which, by each, were inspected and approved. Each State then presented its claim and contention, and these claims

and contentions were discussed and warmly debated and considered on the 25th, 26th, 27th and 28th days of April, and finally on the latter date they came to an agreement, the same being concurred in by all three of the South Carolina commissioners and by two of the Georgia commissioners, John Houston, of Georgia, dissenting from the findings. Mr. Houston did not think that there was any question whatever as to Georgia's territorial limits, and did not desire to concede anything to South Carolina, even for the purpose of an amicable adjustment. His dissent, filed with the report in the Secretary of State's office, affords very interesting reading. Both States made concessions, for the avowed purpose of bringing about cordial and friendly feelings between the two States. In the agreement South Carolina ceded her claims on the south of Georgia—Mr. Houston claiming that South Carolina had none—and Georgia agreed to accept as her northern boundary the head or source of the river Tugalo and the most northern branch thereof. This river, while the shorter, was the bolder of the two streams forming the Savannah. South Carolina was to take the territory lying between these two rivers and was to be entitled to the free navigation of the Savannah river. This finding was reduced to writing, signed by all the commissioners save Houston, whose dissent accompanied the findings. The findings of this convention were reported to the respective Governors of the States and were afterwards adopted. The agreement as to the northern boundary, in exact language, was as follows: "The most northern branch or stream of the river Savannah from the sea or mouth of such stream to the fork or confluence of the rivers now called Tugalo and Keowee, and from thence the most northern branch or stream of the river Tugalo until it intersects the northern boundary line of South Carolina, if the said branch or stream of the Tugalo extends so far north, reserving all of the islands in the rivers Tugaloo and Savannah to Georgia; but if the head spring or source of any branch or stream of the said river Tugalo does not extend to the north boundary

of South Carolina, then a west line to the Mississippi to be drawn from the head spring or source of the said branch or stream of Tugalo River which extends to the highest northern latitude, shall forever hereafter form the separation limit and boundary between the States of South Carolina and Georgia."

It would naturally have been presumed that this would have terminated the controversy, but it was not so to be. It is true that the report and findings of the convention were not only reported to the respective States, but were likewise reported to Congress, and the suit of South Carolina against Georgia therein pending was abandoned, but it was a travesty on the good faith of South Carolina, the Hotspur State, that on the very day this report was filed in Congress, that State, through its delegates and representatives in Congress, by legislative authority, ceded to the Federal government, and executed deed thereto, the identical territory that she claimed to have released, and did release, to Georgia in the convention held at Beaufort. The report, as stated, of the findings of the Beaufort convention was filed in Congress and there referred to a committee, and it was, so to speak, "pigeon-holed," being shelved by reference to a committee, and no action has ever been taken thereon, but the deed and cession of the territory was, on the day it was offered, accepted by Congress. So it would appear that Georgia had neither gained nor lost anything by the Beaufort convention, except that she apparently gained the ill-will of South Carolina, and the dispute was thus transferred from that State and was henceforth to be taken up with the Congress of the United States. It has been said that this action on the part of South Carolina was with the view of forcing Georgia to cede her territory west of the Chattahoochee to the Federal government, but it has likewise been charged to pique and ill-will. But in any event, it was not an exposition of, let us say, at least, good faith, and in this regard it would likewise appear that the Federal government occupied no higher and no better position than that of South Carolina. The Federal government was,

under the suit brought under the 9th of the Articles of Confederation, the court in which was to be determined the controversy between two sister States, yet the Court—the government—accepted the territory which was under dispute to the detriment of one of the litigants. It is charitable to say that it was very worldly, if not very just. It was not, however, an act that brought to her any good results. This cession of South Carolina, if her claim to the territory was valid, conveyed to the Federal government a strip of land twelve to fourteen miles wide by four hundred miles long, and became a block in the shape of a parallelogram between the States of Georgia and North Carolina. Thus matters stood for some time.

On February 17th, 1788, Georgia, through her legislature, passed an act offering to cede her western territory to the United States. This offer was, in 1788, declined by Congress because of the conditions imposed. Subsequently, and because of the Yazoo Frauds of 1789 and succeeding years (the one dark and shameful blot upon Georgia's history, which should cause us to blush even unto this day), a bill was filed in Congress looking to and providing for the cession by Georgia of all of her territory west of the Chattahoochee to the Mississippi River. Commissioners were appointed by the United States and by the State of Georgia, who conferred as to the terms of the cession. In the proceedings of the Seventh Congress, published in "American State Papers and Public Laws," Vol. 1, folio 125, for the years 1789 to 1809, will be found a communication from Thomas Jefferson, then president of the United States, to Congress, under date of April 26th, 1802, transmitting the agreement entered into between the commissioners appointed upon the part of the United States and Georgia, as to the cession of lands by Georgia to the Federal government. In conformity with the terms of this agreement Georgia subsequently ceded to the United States her territory west of the Chattahoochee, out of which has since been carved the States of Alabama and Mississippi. And here is where Georgia "got even," so to speak,

with the Federal government in accepting the cession from South Carolina. This western territory was flooded with the claims growing out of the Yazoo Frauds, and it became necessary for the Federal government to settle all of these disputes. Georgia was covered and quilted with Indian claims: it became necessary under this agreement for the government of the United States to extinguish all Indian titles in Georgia's territory, and it became, in addition thereto, necessary for the United States government to pay to Georgia one million and a quarter dollars, and in addition thereto, to cede to Georgia "whatever claim, right or title they may have to the jurisdiction or soil of any land lying within the United States and out of the proper boundaries of any other State, and situate south of the southern boundaries of Tennessee, North Carolina and South Carolina, and east of the boundaries hereinbefore described." It was a very expensive cession of territory to the United States and Georgia was immensely benefited thereby.

In the "Public Domain," a government publication, under the head of "Area of State Cessions," the following is given as the area ceded by South Carolina to the United States: "The lands ceded by South Carolina constitute a strip lying west of the western boundary and west of the 83d meridian west of Greenwich, running along the (35°) thirty-fifth degree of north latitude to the Mississippi River, *twelve to fourteen miles in width and now lying in the extreme northern part of the States of Georgia (1300 square miles), Alabama (1700 square miles), and Mississippi (1700 square miles), and containing, estimated, 4,900 square miles, or 29,184,000 acres.*"

Again, in same volume, folio 162, "*South Carolina ceded the area from (35°) thirty-fifth degree north latitude, going South, embraced in a belt or zone twelve to fourteen miles in width, extending from the western boundary line of the State of Alabama to the Mississippi River, now in the States of Georgia, Alabama and Mississippi.*"

It would appear from this recitation of historical facts, that

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the boundary of Georgia on the north is the 35° of north latitude, and is now indeed the true boundary. Whether the northernmost branch of the Tugalo did, in the early period of this State, or does now, spring from that degree of latitude, I am unable to say, and the records are not clear on this point, but this degree of latitude was certainly adopted as the true line. I mention this here because it has been claimed and earnestly contended that this degree of north latitude was adopted without apparent reason or the assent of Georgia. It has likewise heretofore been claimed and earnestly contended, and frequently asserted, that the twelve to fourteen mile strip ceded by South Carolina to the United States and by the latter to the State of Georgia, has never been incorporated into Georgia's territory nor subjected to her jurisdiction; but the statements from reliable sources herein contained, and the excerpts taken from reliable government publications, all go to show that this strip of land now really forms a part of Georgia's territory and over which she exercises exclusive jurisdiction and right of soil. In 1796 the State of Tennessee was carved out of the North Carolina cession to the United States, and this State for 109 miles lies north of and contiguous to Georgia, while North Carolina stretches across the balance of her northern border. After the cession to Georgia by the United States the boundary question was again for a time at rest, and then it was again taken up, and Tennessee, North Carolina and Georgia began an investigation as to the southern boundary of the two former States and the northern boundary of this State.

In this connection it may be noted that the Constitution of Georgia of 1798 contained a statement of the boundaries similar to that agreed upon in the Beaufort convention, indeed if the language is not identical with that agreed upon in that convention. In the year 1804 (Acts 1804, p. 180) the Georgia Legislature passed an act to appoint commissioners to ascertain and fix the boundary line between Georgia and North Carolina. In the preamble to this act it is stated that the 35° of north latitude is

the recognized northern boundary of Georgia; and it is in this act further conceded that Georgia did not reach that far north until after she became possessed of the South Carolina cession to the United States in 1802. This being true, it is not surprising, considering in addition thereto the recitations as to boundaries contained in government publications and various histories, that Georgia, through her commissioners, should thereafter adopt the 35° of north latitude as her true boundary, and I cannot conceive how it is that it has heretofore been questioned by some, and most earnestly insisted upon by several of our citizens, that this twelve to fourteen miles strip was never subjected to the jurisdiction of Georgia. Certain it is, that this degree of latitude was subsequently adopted as the true boundary line between Georgia and Tennessee, and also between Georgia and North Carolina, and was ascertained by observations and marked and traced upon the surface of the earth, as will be shown from what hereinafter follows.

The State of Tennessee on November 10th, 1817, passed an act for the appointment of a commission to be composed of a mathematician, a commissioner and a surveyor, to meet a like commission to be appointed upon the part of Georgia, who should proceed to ascertain the true line between said States and cause the same to be plainly, distinctly and notoriously marked in such manner as, in the judgment of said mathematicians and commissioners, would be most likely to perpetuate the notoriety of such line. (Laws and Acts of Tennessee 1815 to 1820, Vol. 2.)

On December 16th, 1817, the Georgia Legislature passed a reciprocal Act, and commissioners were appointed by both States for the purpose as set forth in these Acts. James Camak, mathematician, Thomas Stocks, commissioner, and H. Montgomery, surveyor, were appointed by Georgia, and James S. Gains, mathematician, General John Cocke, commissioner, the surveyor not stated, were appointed by Tennessee. In the year 1818 these parties, representing the different States, met, made

observations, ascertained, marked and traced upon the face of the earth the supposed true boundary between the two States, as near as it could be ascertained with the faulty instruments then in use. A map and diagram were drawn of the dividing line and certified to. One of these maps is now of file in the archives of the Secretary of State's office in Georgia, and a duplicate, a similar map, is of file in the same office in the State of Tennessee. I have been informed by present officers in our State that some years since the two States compared these maps, or to speak more accurately, Tennessee at the request of one of Georgia's officers, sent her map to our Secretary of State, and upon strict examination they were found to be identical. These maps show a clear tracing of the line—mountains, rivers, creeks, and the general topography of the country is exhibited. Each set of commissioners made report to their respective Governors. The Tennessee commissioners made their report, certified to the map prepared, and the Legislature of that State adopted the report on October 30th, 1819. The Act of that State recites, that the line was run and marked by the joint commission beginning at a point in the true parallel of the 35° of north latitude as found by Camak and Gains, mathematicians representing the two States. The beginning of this line 'was located on a rock about two feet high, four inches long and fifteen inches broad, engraved on the north side thus: 'June 1st, 1818, Var. $6\frac{1}{2}$ East' (which was found by the mathematicians to be the variations of the compass); and on the south side of said rock was also engraved: 'Geo. 35° North. J. Camak,' which rock stands one mile and twenty-eight poles from the south bank of the Tennessee River due south from near the center of the old Indian town Nickajack, and near the top of Nickajack mountain, at the supposed corner of the States of Georgia and Alabama; thence running due east leaving old D. Ross two miles and eighteen yards in the State of Tennessee, and leaving the house of John Ross about two hundred yards in the State of Georgia, and the house of David McNair one mile and a fourth

of a mile in the State of Tennessee, with blazed and one mile marked trees, lessening the variation of the compass, by degrees closing it at the termination of the line on the top of the Unacoi mountain, at five and one-half degrees; as the true dividing line between the States of Tennessee and Georgia and is adopted as the true line." The Act further provided that the same should become final upon Georgia likewise adopting the report of the commissioners. (Laws of Tennessee 1817 to 1820, Vol. 2, pp. 475, 476.) On December 11th, 1819, following the Act of Tennessee in the same year adopting the report of the commissioners, a resolution was passed by the Georgia Legislature which was approved on December 18th, 1819 (Acts 1810 to 1819, p. 1217), which provided as follows: "Resolved, that his Excellency the Governor be, and he is hereby, authorized and requested to have recorded, in the Surveyor-General's office of this State, the maps of the line as run dividing this State and the States of Tennessee and North Carolina, with the certificates thereunto annexed, and pay for the same out of the contingent fund." This is the only action, so far as I have ascertained, taken by Georgia, but it stands, as I conceive it, as a confirmation and adoption of the report. The map referred to was filed and bears the following certificate: "We the undersigned do hereby certify that the within is a correct map of the boundary line between the States of Georgia and Tennessee. Given under our hands in Milledgeville, this the 13th of July, 1818. J. Camak, Math., Thomas Stocks, Comr., H. Montgomery, Suvr."

The line thus run by these commissioners was from a point supposed to be where Tennessee, Alabama and Georgia corner, and along the northern border of Georgia to a point where Tennessee and North Carolina join each other. A similar effort was made as to the true ascertainment of the line between Georgia and North Carolina, and this report was also made by Mr. Camak, mathematician.

On December 15th, 1809, Georgia, through its legislature, memorialized Congress setting forth the dispute as between

Georgia and North Carolina, and requested that appropriate action be taken and a suitable person be appointed to run, map out and mark the true dividing line. There were no results from this proceeding, and in 1810, on December 15th, the State of Georgia, by appropriate resolution, again called the attention of North Carolina to the dispute between them as to boundary. Under this resolution the Governor was empowered, even without the concurrence of North Carolina, to appoint Mr. Andrew Ellicott to ascertain the location of the 35° of north latitude. It was provided that, if North Carolina should concur and cooperate, the observation and location of the line should be final and conclusive. The observation was made and concurred in by Georgia, but it does not appear that the dividing line was run and marked out upon the surface of the earth. Again, in 1818, by resolution of the Georgia legislature, the Governor was authorized and directed to appoint proper persons to meet such as should be appointed by North Carolina to make and trace the dividing line between the two States. Mr. James Camak, the same person who acted as mathematician for Georgia in tracing and marking the line between Georgia and Tennessee, was appointed and made observations and surveys, taking the 35° of north latitude as the true line. Mr. Camak made a second survey in 1826, when further effort was made to locate the 35° of north latitude. In this latter survey the line was run some distance north of the line located in 1818.

Mr. Camak also made further observations and surveys of the Tennessee and Georgia line in 1826. As to this second observation and survey, Mr. Camak, in his report, which is of file in the Secretary of State's office, says, under date of January 15, 1827, that, on both occasions, he labored under the difficulty of using imperfect instruments, although having better ones in 1826 than in 1818. In his report, date of January 15, 1827, he says: "*In the spring of 1818 the States of Georgia and Tennessee, by their commissioners, ascertained and marked the dividing line. I received on that occasion the appointment of Mathematician from*

Governor Rabun. The 35th parallel of north latitude constitutes that boundary and there was nothing more to do than to trace and mark that parallel on the surface of the earth. . . . The result of the observations made on that occasion differs from that of those contained in this report." Mr. Camak, further in this report of 1826, says that he located the line 37-90/100 chains further north than in 1818, and as the boundary of Tennessee and Georgia is one hundred and nine miles in length, he calculated that Georgia lost on her first survey in 1818, 51-51/80 square miles, or 33,048 8-10 acres. This is to be understood as relating only to the boundary between Georgia and Tennessee. The boundary on the North Carolina line is ——— yards north of the observation of 1818. Mr. Camak does not say positively which of these two surveys is correct, but he gives preference to the observations and surveys of 1826, the conditions being more favorable and the instruments used somewhat better than those used in 1818.

It does not appear—if so, I have not located it—that the States of Tennessee and North Carolina took any part in the observations made in 1826 by Mr. Camak, but it, at least, serves to illustrate that Georgia was not entirely satisfied with the line of demarkation fixed in 1818, and yet, from that date for seventy-odd years she made no effort to dispute the boundary agreed upon in 1818. So far as I have ascertained, matters stood thus until the adoption by Georgia of the Code of 1861, wherein the boundaries are set forth, substantially as agreed upon in the Beaufort Convention of 1786, except that the boundary is in such Code *located on the 35th parallel of north latitude* (Sec. 17). It would appear from this that the northernmost branch of the Tugalo River originated in this degree of latitude. In section 18 of the Code the boundary between Georgia and Tennessee is given at a point *where the river Chattooga, which is a branch of the Tugalo, intersects the 35th parallel of north latitude*. In section 19 of the said Code the boundary between the States of Tennessee and North Carolina and Georgia "*shall be the line described as the*

thirty-fifth parallel of north latitude from the point of its intersection by the river Chattooga west to the place called Nickajack." Subsequent Codes to 1882, inclusive, contain similar declarations. The only Constitution of the State of Georgia that has contained any reference to the State boundaries is that adopted in 1798, which was framed by the convention which met at Louisville, May 8, 1798, was signed May 30, 1798, and went into effect on first Monday of October, 1798, without having been submitted to the people for ratification. (Ben Perley Poore, on Federal and State Constitutions, Colonial Charters and other Organic Laws.) The claims as to boundaries therein expressed are substantially the same as those ceded by South Carolina at the Beaufort Convention. So that the question, which has heretofore been raised, that the several Acts of the Georgia Legislature naming the 35° of north latitude as her northern dividing line were in conflict with the Constitution of 1798, and that such acts could not abrogate nor set aside the claims of that Constitution, appears to me to be without force for three reasons—first, the Convention which adopted the Constitution and the Legislature which adopted the Acts were both named by the people, and neither the Convention adopting the Constitution nor the Legislature adopting the Acts submitted them to the people for ratification, and the Constitution of 1798 is not, therefore, because of supposed ratification by the people, supreme; second, subsequent Constitutions have not made any such declarations, and, therefore, we have no constitutional provision settling the question; and third, it really appears that the 35° of north latitude, as claimed in the several Georgia Acts, is in reality and in fact the true and original boundary and that Georgia is bound thereby.

It would appear from all the foregoing, and from the numerous citations which have been given, and from the surveys made which were adopted and agreed to, that the matter of boundary was forever and a day set at rest, and yet, the three States at interest—Tennessee, North Carolina and Georgia—have of recent years again taken up the matter through their respective legisla-

tive branches. The Legislature of North Carolina, by an act approved March 12, 1881, authorized and directed the appointment of a commissioner upon the part of that State to act with surveyors or commissioners that should be appointed by the State of Georgia, to rerun and remark the boundary line between that State and this State and between that State and other States ; and that in the event any disagreement should arise between the commissioners, the Governor was authorized to appoint arbitrators who should act with similar officers to be appointed by the other States with the view of settlement as to the exact boundary ; and should they not agree, the matter should be reported back to the Legislature of North Carolina for action. (Code of North Carolina, sections 2289, 2293.)

On October 5, 1887, the Legislature of Georgia (Acts 1887, page 105) declares that grave doubts exist as to the location of the State line between Georgia and the State of Tennessee, on that part of the line which runs between Dade county in Georgia and Marion and Hamilton counties in Tennessee, and that said line should be definitely settled and fixed. The Governor of Georgia was directed to communicate with the Governor of Tennessee and request that State to join the State of Georgia for the purpose of having a joint survey and a settlement of the disputed question. To this end the Governor was authorized to appoint three competent persons to act as commissioners with a like number to be appointed by the State of Tennessee, whose duty it should be to make observations, survey, establish and proclaim the true line between the disputed points.

On April 8, 1889 (Acts of 1889, p. 499), the General Assembly of the State of Tennessee passed an Act reciprocal to the Act passed by the State of Georgia, reciting that grave doubts existed as to the location of the State line between Marion and Hamilton counties, Tennessee, and Dade county in Georgia. The Governor of that State was directed to communicate with the Governor of Georgia with a view of having a joint survey made looking to a settlement of the question in dispute. The Governor of that

State, as was the Governor of Georgia, was empowered to appoint three commissioners to act with those appointed by the Governor of Georgia, whose duty it should be to survey, establish and proclaim the true line between the disputed points. That State, however, in its Act, provided that the joint commission should begin their survey at the point where Georgia and Alabama corner, and run east as far as may be necessary to establish the true line. It may be that this provision took away the virtue of the Act, but being unfamiliar with the geographical situation at that point I can not express an accurate opinion.

The State of Georgia, through its Governor, on July 7, 1893, to wit Governor Northen, appointed three commissioners to act upon the part of this State, the commissioners named being S. W. Hale, J. T. Lumpkin and J. J. Johnson, all of Dade county. I have never been advised whether the State of Tennessee ever appointed commissioners in pursuance of the Act of the Legislature of that State; it is true, however, that they never came together for the purpose of running the line as was apparently intended by the passage of those Acts.

It having been clearly shown that the 35° of north latitude was the true line, and that the effort was made to establish that line, it seems clear that the line should be located upon that parallel. I have consulted a large number of maps, and in nearly all of them the 35th parallel runs plumb with the north border of our State. The only exception being a few maps I examined which were published in the State of Tennessee, and from those maps it is very apparent that the line, in approaching Marion and Hamilton counties, Tennessee, makes a considerable dip, so that Georgia, at that point, appears really to have lost a portion of her territory. Whether this was occasioned by the original line being effaced, or otherwise, cannot be said, yet it is apparent, both from the Acts of Georgia and of Tennessee, that whereas, there may not be doubt as to the other parts of the line between the two States, at this identical point there seems to be grave and serious doubt as to the location of the line and of the 35° of

north latitude, and it is very probable, indeed, that this legislative enactment upon the part of the State of Tennessee could be used as the means of bringing about an investigation into that question. However, whether that would remove the bar which would exist against Georgia, because of long silence and acquiescence in the line run, is a serious question, and I am convinced, in my own mind, that if Tennessee stood squarely upon her rights and claimed the territory as it exists, she would be sustained. My reason for this assertion is because of the authorities which are hereinafter given to sustain the contention which I have set up in this paper.

This brings us now to the discussion of the legal questions involved in this matter. As stated, in the beginning of this investigation, I expected different results. I was led to this belief by a very brief examination and by conversation with others who had, to some extent, investigated the question at issue. In fact, the State of Georgia has very recently caused an investigation to be made into this question by one of her State officers. The report from that officer to the Executive was based upon the theory that there had been no clearly marked or defined line upon the surface of the earth. I wish, in my investigation, that I had found this to be true, because the result *might* have been different, by reason of recent legislation in the different States; if so, that would naturally have brought generally under discussion the statutes of limitation and estoppel, and the consequent effect of such legal principles, because of the recent statute of our border sister State, Tennessee. I conceive, however, that a general discussion of those legal principles, that of limitation and estoppel, would now be out of place, as I think it clearly proven that this State and the State of Tennessee have, beyond question, entered into a compact and convention as to the line which was run and marked out on the surface of the earth in 1818. From that time until the present it has been acquiesced in. This line is established by the acts and resolutions of both States, by adoption of surveys made at the instance of the States, by notorious marks as

to the beginning point of the line so run, and by tracings and marks upon the surface of the earth. This marking and tracing of a decided line bears the stamp of approval which binds, in my humble judgment, the sovereignty of both States at issue. This being true, what is the legal effect of such a compact and agreement on a clearly defined boundary?

The Supreme Court of the United States, where is vested the exclusive and original jurisdiction of similar questions, in several adjudicated cases to which reference is herein had, lays down the broad principle, as stated in the fifth head-note to the decision of that court in the case of the State of Virginia *vs.* the State of Tennessee, 148 U. S., p. 503, as follows: "A boundary line between States which has been run out, located and marked upon the earth and afterwards recognized and acquiesced in by them for a long course of years, is conclusive even if it be ascertained that it varies somewhat from the courses given in the original grant."

In this case (which is preceded in point of time by others of similar character determined in that court), the old royal grants were taken as the source from which the right was claimed. By legislative enactment of both States a joint commission was created to ascertain, locate and clearly define the boundary line between them. This was done and the report of the commission was adopted by both States through their General Assemblies, and the Supreme Court of the United States says that this should be conclusive and final where it has been acquiesced in for a long number of years.

The question was there raised by the State of Virginia that the two States had no authority to make any such compact and agreement, that it was violative of the Federal Constitution, which says: "No State shall, without the consent of Congress, . . . enter into any agreement or compact with another State," etc.; and it was asserted that Congress had not given its consent to such compact and agreement between the two litigant States. In answer to this contention the Supreme

Court says, the consent of Congress could not have preceded the execution of the compact, for until the line was run it could not be known where it would lie and whether or not it would receive the approval of the States. The approval of Congress of the compact entered into between the States upon their ratification of the action of their commissioners is fairly implied from its subsequent legislation and proceedings. The line established was treated by that body, that is Congress, as the true boundary between the States in the assignment of territory north of it as a portion of districts set apart for judicial and revenue purposes in Virginia, and is included in territory in which federal elections were to be held and for which appointments were to be made by federal authority in that State. The same was true on the south of the line for the State of Tennessee. The line thus laid out, marked and run, must, therefore, take effect not as an alienation of territory, but as a definition of a true and ancient boundary, and this is true even if there has been a mistake, fraud not intervening, and varies from the original grants.

This decision appears to me to fully cover the case of Georgia and Tennessee, if the act of the Georgia Legislature in ordering the maps and surveys made in the year 1818 certified to and filed in the Surveyor-General's office, which has heretofore been mentioned, is to be taken as her assent to the boundary line so run. It is certainly a fair interpretation of that resolution to say that such was its true meaning and intendment. It can readily be seen from this ruling by the highest tribunal in our land that Virginia (who, by the way, had given more territory to the Federal Government than any other State in the Union) had lost her cause in the Federal Court and must abide the line run under the compact with her sister State. Is not Georgia likewise bound?

Several authorities are cited, some of which will herein be noted. The court quotes with approval the following from Vattel on the Law of Nations, Book 2, Chapter 11, section 149: "The tranquillity of the people, the safety of the State,

the happiness of the human race, do not allow that the possessions, empire and other rights of nations should remain uncertain, subject to dispute and ever ready to occasion bloody wars. Between nations, therefore, it becomes necessary to admit prescription founded on length of time as a valid and incontestable title." The court also quotes with approval the following from Wheaton's International Law (Part 2d, Chapter 4, section 164): "The writers on natural law have questioned how far that peculiar species of presumption, arising from the lapse of time, which is called prescription, is justly applicable as between nation and nation; but the constant and approved practice of nations shows, that by whatever name it be called, the uninterrupted possession of territory or other property for a certain length of time excludes the claim of every other in the same manner as, by the law of nature and the municipal code of every civilized nation, a similar possession by an individual excludes the claim of every other person to the article of property in question." The court says further in this decision that there are also "moral considerations which should prevent any disturbance of long recognized boundary lines; considerations springing from regard to the natural sentiments and affections which grow up for places on which persons have long resided; the attachments to country, to home, and to family, on which is based all that is dearest and most valuable in life."

In the case of the State of Indiana *vs.* The State of Kentucky, in 136 U. S. 479, the court says: "That it is a principle of public law, universally recognized, that long acquiescence in the possession of territory, and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority." In this case it appears that there had been no compact or agreement between the States, both having derived their original grants from the Government of the United States from territory obtained by the cession from the State of Virginia. Indiana contended that a certain island in the Ohio River was a part of the territory of that State. The contrary

was contended by the State of Kentucky. From the report it would appear that Kentucky had exercised jurisdiction over the island for a long number of years, and the State of Indiana had not contested her right to do so; and it would appear even from this case, where there had been no compact and agreement between the States, that where a certain line was presumed to exist, and the State had exercised right of authority and jurisdiction over it for a long number of years, the Supreme Court did not, nor would any court, I apprehend, disrupt the status of affairs and bring about a long train of litigation, turmoil and strife. The case of *Penn vs. Lord Baltimore*, 1st Vesey, Sen. 444-448, is also in point, as is the case of *Burgess Poole et al. vs. The Lessee of John Fleege et al.*, 11 Peters, 185. In this latter case the court says: "It is a part of the general right of sovereignty belonging to independent nations to establish and fix disputed boundaries between their respective limits; and the boundaries so established and fixed by compact between nations become conclusive upon all the States and citizens thereof, and bind their rights; and are to be treated, to all intents and purposes, as the real boundaries. This right is expressly recognized to exist in the States of the Union by the Constitution of the United States; and is guarded in its exercise by a single limitation or restriction only, requiring the consent of Congress." As to this latter clause, that requiring the assent of Congress to a compact between States, the quotations from the case of *Virginia vs. Tennessee*, hereinbefore quoted, would seem to indicate that Congress has, by its Acts, given its implied assent to the compact between Georgia and Tennessee as to their boundary line. In this case it is further held that, "Between nations there is no specific period during which possession of disputed territory must have remained with one of them, to constitute a title by prescription; because as between such claimants there is no supreme power to dictate to them a positive rule of action. But the principle applicable to such a case, which is derived from the law of nations, is, that possession must have endured long

enough to evince a distinct acquiescence on the part of the adverse claimant in the rightfulness of the possession, and what length of possession is necessary for that purpose must, of course, depend upon the peculiar circumstances of each case. To give to possession such an effect it is requisite also that it should have been held with the knowledge of the adverse claimant; for the fact of possession operates against the party which seeks to disturb it as presumptive evidence of abandonment, and it furnishes to the party holding it proof of the same description, and of equal force, in favor of the existence of the right." This decision in another place states as follows: "While the compact ceded to Tennessee the jurisdiction up to Walker's line, it cedes to Kentucky all the unappropriated lands north of the latitude of $36^{\circ} 30'$ north. It thus admits, what is in truth undeniable, that the true and legitimate boundary of North Carolina is in that parallel of latitude, and this is also declared in the charter of Charles the Second and in the Constitution of North Carolina to be its true and original boundary."

There could be no more conclusive principles of law than those announced in the foregoing decisions and authorities. Under such positive and distinctive rulings of the high court, wherein such matters are cognizable and can alone be determined, what legal claim would the State of Georgia have to reopen her boundary question? I apprehend that time would bar any such right; her repeated legislative enactments would likewise rise as an effectual barrier, and the line of 1818, clearly marked, defined and agreed upon, would, with the undoubted possession of Tennessee, certainly estop her from forever advancing her outposts north of the 35° of north latitude, and, if she was so unfortunate as to have this line so run as to lie south of that latitude, then Tennessee, as usual was the gainer. In any event, if this crude presentation of the facts and the law shall, to any extent, be the means of bringing about a final settlement or abandonment of the issues, then this paper, while not intended as a literary production, its kernel being facts and not figures of

speech or rhetorical display, will not have been written without good purpose. In the meantime, as Georgia does not need this additional territory, we can do without it. As it apparently does not belong to us, we will have to do without it, and the old 35° of north latitude, which has brought about so much of toil and of strife, will still continue as the line of demarcation for our northern frontier so long as the stars, from whose twinkling lights it was located, shall continue to shine and twinkle and run their courses in the order of nature and subservient to nature's laws, and guided by the unerring hand of nature's God.

APPENDIX B.

REPORT OF THE TREASURER.

Z. D. Harrison, Treasurer,

In account with Georgia Bar Association.

To cash balance from last report.....	\$ 743 52
Dues collected since last report.....	975 00
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By Vouchers No. 1—Warm Springs Hotel.....	\$ 7 00
“ “ No. 2—Augusta Chronicle.....	2 00
“ “ No. 3—Enquirer Sun.....	2 40
“ “ No. 4—Morning News.....	2 00
“ “ No. 5—Telegraph Pub. Co.	1 00
“ “ No. 6—W. M. Gerdine.....	35 00
“ “ No. 7—Franklin Printing & Pub. Co. .	416 89
“ “ No. 8—Franklin Printing & Pub. Co. .	14 45
“ “ No. 9—J. W. Burke Co.....	18 25
“ “ No. 10—O. A. Park, Secretary.....	200 00
“ “ No. 11—Z. D. Harrison, Treasurer.....	100 00
Exchange on checks and drafts.....	1 95
Balance.....	922 58
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	\$1,723 52 \$1,723 52

Examined and approved by Executive Committee, July 3, 1902.

ALEXANDER R. LAWTON, Chairman.

APPENDIX C.

THE HISTORY, OBJECTS AND ACHIEVEMENTS OF THE GEORGIA BAR ASSOCIATION.

PAPER BY

WALTER B. HILL, LL.D.,

CHANCELLOR OF THE UNIVERSITY OF GEORGIA.

The Executive Committee has requested me to prepare a paper on the history, objects and achievements of the Georgia Bar Association.

As to its history, may I not ask, in Biblical language, are not its acts and doings "written in the chronicles" of the secretary? The only fact outside the record which I am able to supply by parol testimony relates to the first consultation which led to the call mentioned in the minutes of the first meeting. It is stated in the minutes of August 1, 1883, that "pursuant to a call addressed to the members of the American Bar Association, resident in Georgia, by Col. L. N. Whittle, vice-president of the Association for this State," certain members of that organization, with others invited by them, assembled in Atlanta.

This call was the result of an informal conference held at Macon, Georgia, during the early part of 1883, in the chambers of Hon. Thomas J. Simmons, then Judge of the Superior Courts of the Macon Circuit.

Gen. A. R. Lawton had come to Macon from Savannah for the purpose of arguing a motion for a new trial in some case against the Central Railroad and Banking Company of Georgia. He was one of the prime movers in the organization of the American Bar Association, and his belief in the utility of State Bar Associations led him to suggest at that time to various members of the Macon bar who were present, the formation of an Association in Georgia.

It was at that meeting determined to request Colonel Whittle to issue the call mentioned in the minutes of the first meeting.

OBJECTS OF THE ASSOCIATION.

It may be stated generally that the object of the Association is *to organize the influence of the bar in its public relations*. Outside of the service that a lawyer renders to his individual client, it is recognized that the bar sustains public relations to the people of the whole State. It discharges an indispensable function in the administration of justice; it holds in trust a mighty influence on public opinion; and it is one of the securities of public liberty.

Before taking up in any detail the efforts of the Association to accomplish the purpose for which it was formed, it affords genuine pleasure to be able to say that in its activities the Bar Association has had exclusive reference to these public relations. It would not have been illegitimate if the organized bar, like other associations of business men, had paid attention to private interests. It would not have been illegitimate to take up the question of the fee bill or to urge the right of the bar to compensation for some services which they now render to the public without it. But it is a salient and gratifying fact, that no private or pecuniary interests of the legal profession have ever received any attention at any one of the eighteen annual meetings of this body. Altruism, not the promotion of selfish aims, has been the inspiration of the Association throughout its entire history.

THE CHARTER.

The Association is entitled to be judged by its objects as declared in its charter and constitution. The language of the charter is "Its object is to advance the science of jurisprudence; promote the administration of justice throughout the State; uphold the honor of the profession of law; and establish cordial intercourse among the members of the Bar of Georgia." These objects are carried out through the organized work of the Association, upon the suggestion and report of various committees, whose purposes are defined in the by-laws, and are sufficiently indicated in the names of the committees, as follows:

Committees on Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Grievances; on Memorials; on Federal Legislation; on Interstate Law; on Legal Ethics; on Legislation; and an Executive Committee, which prepares the annual program.

THE UNIFORM PROCEDURE ACT.

Judge Andrew J. Cobb, in a report submitted in 1896 (13 Rep., p. 256), says:

"The Uniform Procedure Act had its origin in the Association, and it is being perfected from time to time by such amendments as experience suggests."

At the first annual meeting (1st Rep., p. 29) this subject was taken up. The Committee on Judicial Administration and Remedial Procedure recommended the adoption of a system of pleading known as the Code of Procedure, which is in principle substantially the same as the Uniform Procedure Act.

It may be well to recall the state of the law as it existed at that time. Legal and equitable pleading had been partially merged; at least to the extent that an equitable defense might be interposed in an action at law, and it was no longer necessary to resort to the court of equity to enjoin a proceeding at law as means of setting up a defense. The tribunals which administered the principles of law and equity were the same—the same judges and the same juries.

If, however, a suitor filed a bill in equity when he had adequate remedy at law, he might be met by a demurrer on that ground alone. If the decision on the demurrer was adverse to him, his case was dismissed and he must needs submit to the delay of a review by the Supreme Court on the question of proper forum. If the decision was in his favor, he would have lost the time required to settle merely the preliminary question whether his paper should have been addressed to the Judge of the Superior Court as Chancellor, or to the Superior Court. If the decision was against him, he might set up substantially the same allegations in a petition at law, with a change in form of beginning and end of the document, and might thus proceed after so much loss of time.

If the decision was in the suitor's favor, the demurrer might remain a part of the record while the case proceeded to final determination, but even after final judgment, if it should be held that the suitor was not in the proper forum, the whole case might go out of court.

In those States where the Legislature had provided separate tribunals at law and in chancery, this question of proper forum might reasonably be treated as important; but after the merger of forums, as above stated, it was a mere fiction to dismiss the suitor from one court and send him to another court when in point of fact both courts were the same.

At the second annual meeting the committee was instructed to prepare a draft of a Procedure Act, and said draft was presented at the third annual meeting (3d Rep., p. 197 *et seq.*). This report contains the substance of the Uniform Procedure Act as subsequently adopted.

Without depreciating the services of the members of the bar outside of the Association who labored for this reform, Judge Cobb's statement above quoted is amply sustained by the facts.

It is probable that we have not yet fully realized the benefit of this reform. Every new system passes through the ordeal of preliminary construction; but while we have not yet adopted *in solido* the Code of Procedure as it has been enacted in many of the so-called Code States, our system is so nearly similar to their that, on questions of procedure and practice, we have the benefit of the labors of courts all over the country who are engaged in rendering legal procedure simple, certain, and rational. "The substance of right is more important than the science of statement."

LEGAL EDUCATION AND ADMISSION TO THE BAR.

The Association took up this subject at its first meeting. This is not surprising when we recall the extremely unsatisfactory condition of the law at that time regulating admission to the bar.

It is proposed to give here a condensed history of the action of the Association on this subject during the entire period of its history. The reason why this topic is treated at length is that a satisfactory solution has not yet been reached, and it is believed that a

history of the discussion may prove of value in the further discussion.

The condition existing in 1884, when the subject was first taken up, is thus described in the report of an able committee, submitted by Hon. Joseph B. Cumming as chairman (1st Rep., p. 36) :

"The committee beg leave to report that, in their opinion, the existing provisions of the law of Georgia on the subject of admission to the bar are, as administered, a mere form, establishing a purely imaginary line between the laity and the so-called 'learned in the law.' Under the practical workings of these provisions of our law, the applicant can be admitted to practice in the courts of Law and Equity without possessing the slightest legal knowledge. Apart from the stimulus of pride and the natural shrinking from a public exposure of gross ignorance, there is nothing to induce a candidate to qualify himself to answer correctly the questions propounded to him. His admission, accompanied by expressions of satisfaction from the members of the Board of Examiners, and a congratulatory speech from the bench, is just as sure to follow a complete failure as a brilliant success."

The recommendations of this committee were as follows (1st Rep., p. 37) :

"First. The requirement of a considerable period of study, say three years, devoted exclusively to the law, or to law and literature. This period to be spent in a lawyer's office, or in attendance upon law lectures, or both.

"Second. A thorough and regular examination instead of the merely formal and perfunctory one now in vogue, and the attainment of a certain prescribed average of proficiency as a condition precedent to admission.

"Third. The appointment of a board of four examiners for each judicial circuit, whose duty it shall be to examine candidates at stated periods, upon written questions, to which written answers are to be given. Such examiners to be appointed by the Supreme Court of the State, and to hold their positions *dum bene se gessint*."

In support of these propositions the committee submitted a strong argument, and the Association voted, on presentation of the report, that a committee should be appointed to frame a bill embodying the provisions of the report, and submit the same at the next meeting (1st Rep., p. 51).

At the second annual meeting, Mr. Cumming presented the bill, entitled "An Act to regulate admission in the courts of law and equity in this State" (2d Rep., p. 18). The proposed period of three years was changed to thirty months, and it was further provided that the Board of Examiners might supplement the written examination by oral examination in their discretion. The bill provoked an animated discussion. The following extracts from the remarks of Hon. George Dudley Thomas, then professor in the Law School of the State University, will be of interest, especially in view of the questions still remaining unsettled:

"It has been said by the last gentleman who took his seat (Col. Billups), that the prescribed course of study at the Law School of the University of Georgia is nine months. That is true, and in what I now say I speak for myself, not with the authority of the trustees or other members of the faculty, but I do say that if this bill becomes a law of Georgia, that the curriculum of the University will be raised to conform to the law expressed in that bill, and will be not less at the Law School than by another method of study. The reason why we have to confine it to nine months is apparent. One of the board of trustees, Judge Hall, asked me at the last commencement, if it would not be better for the University if the term was extended by the trustees from one year to two, and the answer I made to him was this: 'It seems to me conclusive, if the University of Georgia requires two years' study in order to obtain a diploma and be admitted to the bar, every student in Georgia who desires to become a lawyer will say, 'I can study in my room, read Blackstone two weeks, and be admitted in any court in the State of Georgia. Why should I spend two laborious years at a law school?' Over five years' experience in teaching applicants for admission to the bar, more than seventy of whom I have had the pleasure (because it is a pleasure) to instruct, leads me to say that no man who has ever come within the circle of my acquaintance could fit himself for admission to the bar in one year's study."

Pending the discussion of this bill, another bill by Mr. Washington Dessau, was submitted to the meeting (2d Rep., p. 41), of which the characteristic feature was as follows:

"SECTION 4. Be it further enacted by the authority aforesaid, That it is hereby made the duty of the Supreme Court, and the said court is hereby authorized to appoint five lawyers in good

standing, who shall constitute a Commission of Examiners, whose duty it shall be to examine all applicants for admission to plead and practice law in this State, and who shall report the result of such examination in writing, under their signatures, to the Supreme Court on the first day of the February term of said court, in each and every year. The candidates for admission, upon whom the said Commission of Examiners shall report favorably, shall, upon taking and subscribing the oath hereinafter set out, be admitted in the said Supreme Court to plead and practice law in all the courts of this State."

A motion was made (2d Rep., p. 44) to lay the bill on the table, and a vote was taken to test the question whether the Association was satisfied with the existing law. The motion to lay on the table was lost, and it is stated in a subsequent report (vol. 4, p. 8) by the secretary, that this motion was lost by a vote of two to one. Upon the announcement of this result, General Lawton made a strong speech, which is well worth reading by any student of this subject. He began by saying (2d Rep., p. 46) :

"I do ask for a few moments. It is a serious question whether the law is a valuable profession; it seems to be a question here. Is it valuable to the community? If it is, it is worth protecting for the benefit of that community. (Applause.) Is it a privilege to him who is permitted to exercise its functions? If it is, then he should take some little pains to win that privilege." (Applause.)

In the course of this argument he antagonized the law permitting the students of law schools to be admitted to the bar upon diploma, quoting the action of Prof. Minor of the Law Department of the University of Virginia, who had in that State favored the examination of the law students by the State board. At this point Mr. George Dudley Thomas again said (2 Rep., p. 48) :

"Mr. President, I want to say that I am in favor, myself, of requiring the graduates of law schools to stand the same examination. It is a good advertisement for a school."

Both bills were referred to a committee (2d Rep., p. 55), and the committee (2d. Rep., p. 62) reported back a bill which was substantially that of Mr. Dessau; but after further discussion the whole subject (2d Rep., p. 70) was laid on the table.

At the third annual meeting the subject came up on a proposition which provided merely for written examinations under the existing law (3d Rep., p. 59). This proposition, which was exceedingly mild in its nature, was adopted (3d Rep., p. 61).

At the fourth annual meeting (4th Rep., p. 180) the subject again came up on report of a committee of which Hon. George A. Mercer was chairman. The report recommended that a period of one year's study should be required, both for those who sought admission to the bar through a law school or through study in a lawyer's office. The bill provided for a Board of Examiners and for written examinations. The report of the committee was received, and the committee was requested to confer with the Judiciary Committees of the Senate and House, with a view of having embodied into a statute such suggestions and recommendations as said legislative committee might approve. (4th Rep., p. 18.)

At the fifth annual meeting the committee submitted a report providing for written examinations to be held by a committee to be appointed by the judge of the superior court in each circuit. Another characteristic feature of the bill was as follows:

"Satisfactory evidence that he has enjoyed a preliminary training and experience of at least one year, within a period of three years next preceding his admission, in some approved law school or college, or in the office of some practitioner of recognized standing and ability." (5th Rep., p. 233.)

In presenting the report Judge Wm. M. Reese said:

"I think that the limitations proposed by this statute are very reasonable ones. It is not pressing the matter too far on the poor young men of our country who have to make a living, and it gives much more time to be ready for the great work of our lives."

At the sixth annual meeting (6th Rep., p. 69) the committee reported that a bill embodying certain changes in the law had been introduced into the General Assembly.

At the seventh annual meeting (7th Rep., p. 86) the committee reported that the bill had been defeated, and that the committee "has learned that the chief objection urged against it was that it required the applicants to submit to a written examination." The

committee proposed a new bill, of which the characteristic feature was the requirement of examination by examining boards or committees, to be appointed by the judges of the superior courts. These would be standing boards or committees, and not merely temporary committees raised under the existing law for an examination. (7th Rep., pp. 87-8.)

At this meeting (7th Rep. 19) the Committee on Legal Education and Admission to the Bar, was instructed "to lay before the next General Assembly the several bills which have been offered on that subject . . . and that they be requested to urge the passage of a bill which shall raise the standard of legal education and admission to the bar in this State."

At the eighth annual meeting no action was taken.

At the ninth annual meeting Hon. W. H. Fleming, chairman of the committee, reported that "the field of discussion had been generally covered in previous reports, and that the matter has been exhausted." (9th Rep., p. 7.)

At the eleventh annual meeting (11th Rep., p. 113) the committee reported, suggesting as a moderate change in the existing law, written examinations to include also the subject of ethics, and also oral examination in open court.

At the twelfth annual meeting a valuable and elaborate report was submitted by a committee, of which Hon. Henry R. Goetchius was chairman. This report, however, did not suggest any specific changes in the law, and when brought before the Association the only action taken was "that the report be printed and distributed to the members of the General Assembly, and that the present Committee on Legal Education be requested to bring the matter to the attention of that body, and to endeavor to secure the passage of the best bill practicable and in conformity as near as may be to the repeated recommendations of the Association." (12th Rep., p 12.)

At the thirteenth annual meeting (13th Rep. 253) a report was submitted by Hon. Andrew J. Cobb, chairman. This report repeated the statements in the report of the committee of 1895, that the subject of legal education and admission to the bar had received more attention and had been more largely discussed than any other

subject before the Association; and the committee added that up to that time the agitation had been without result.

At the fourteenth annual meeting (14th Rep., p. 284) the report of the committee urged as an amendment to the existing law that the student be required to spend at least one year in preparing for the examination.

At the fifteenth annual meeting (15th Rep., pp. 37-8) Hon. John P. Ross, in the absence of the chairman of the committee, reported to the Association the action of the American Bar Association in reference to the lengthening of courses of instruction in law schools and the requirement of a general education equivalent, at least, to a high school course. In presenting the report, and in referring to the Act of 1897, Judge Ross said:

"I wish to say that we are about to enter upon a new method of admission to the bar in Georgia which, I think, if diligently carried out, will inure to the benefit of the profession. Of course, it is left to the Supreme Court of our State to fix the standard which must be attained after the first of next month, I believe it is, for admission to the bar. I think the standard ought to be so fixed that it would require two years' study to attain unto it. If that were the case, I would be in favor myself of a provision enacted into law that two years must be devoted to the study before admission to the bar; and if such an act as that were passed, if our schools of law in the State should not voluntarily extend their course to two years (which I am sure the one with which I have the honor to be connected would do*), then I would favor the enactment of a law that in order to obtain admission upon the diploma of those schools that they have a two-years course. I do not think it would be fair or right to the schools to compel them to have the two-years course unless the enactment should apply to all students of law. I will say that from my own experience, the better way for the student to do is to study law systematically under the direct eye of the instructor—better, if possible, in a law school."

At the sixteenth annual meeting (16th Rep., p. 99) the committee made no report in view of the fact that a paper would be presented to the meeting by Hon. Washington Dessau, who had in the meantime, under the amendment to the Act of 1897, been appointed

* Judge Ross was a member of the faculty of the Law School of Mercer University.

chairman of the Board of Examiners. This paper is an admirable treatise on the general subject.

At the seventeenth annual meeting (17th Rep., p. 104) a report signed by William P. Hill, chairman, was presented, recommending that the exception allowing graduates of law schools to be licensed without standing an examination be repealed. So far as the index to the Proceedings discloses there was no discussion on this report.

At the eighteenth annual meeting (18th Rep., p. 27) the following report was presented by Hon. Spencer R. Atkinson, chairman, and was adopted:

"Save only as hereinafter recommended, your committee approves the present law of the State regulating the subject of Legal Education and Admission to the Bar.

"It recommends,

"First. That the provisions of the present law which enjoin upon the courts the duty of admitting to the bar graduates of law schools in this State upon presentation of their diplomas be repealed.

"Second. That the provisions of the present law be amended so that the superior courts of this State shall be authorized to admit to the bar without further examination, upon proof of good moral character and presentation of their diplomas, the graduates of those law schools, the graduates of which have been heretofore specially authorized to be admitted to practice law upon presentation of their diplomas; provided such law schools shall require a two-years course under a curriculum to be approved by the State Board of Legal Examiners."

The action of the nineteenth session is reported in the present volume and need not be here repeated.

It is not too much to claim that the reform accomplished by the Acts of 1897 and 1898 was due principally to the earnest agitation which the Association had carried on since 1884; and it is not too much to expect that the continued agitation will result in raising still higher the standard of legal education. As the subject is still pending, it will not be unprofitable to supplement the history of the movement in Georgia by a statement of experience elsewhere.

In connection with the American Bar Association, and as the outgrowth of the activity of its Committee on Legal Education, there has been formed an Association of American Law Schools. The

Association of American Medical Schools has been accredited with accomplishing a great work in raising the standard of medical education, by fixing a definition of a medical college, and in weeding out unworthy institutions not coming up to the definition.

The four requirements necessary for membership in the Association of Law Schools are as follows:

1. A two-years course (as a minimum).
2. A requirement of a high school education.
3. Ten hours per week (as a minimum of class-room work).
4. A library containing at least the Reports of the State and of the United States Supreme Court.

At the meeting of the American Bar Association in 1901, a report on Legal Education and Admission to the Bar was submitted by an able committee, consisting of Geo. M. Sharp (eminent in legal education); Henry Wade Rogers (eminent in law authorship); John M. Harlan (Justice of the Supreme Court); John F. Dillon (distinguished both as a judge and practitioner); and Henry E. Davis.

This report is replete with facts and figures covering the present state of the law on this subject throughout the Union. The report says on the subject of law schools:

"The conviction has been growing for years that the place to study law is in a school of law. This Association has again and again expressed its conviction to that effect, and its action upon the subject has made an impression upon those intending to enter the profession."

The report catalogues the schools that have a three-years course, those that have a two-years course, and those (only five in number in the entire country) that have a one-year course. On the latter point the committee said:

"The committee can not but deplore greatly that any law schools in the United States still consent to confer the degree of B.L. upon the completion of a one-year course of study. A degree so obtained can have little value, and it is strange that institutions will grant degrees upon such easy conditions. It is, in the opinion of the committee, an abuse of the degree-conferring power which colleges have, and should receive the condemnation, not alone of academic bodies, but of the profession and of the public generally."

On the subject of period of study, the committee shows that eighteen States require by law a three-years period of study (whether in a law school or otherwise) ; eleven States require a two-years course of study in a law school or law office. A one-year course of study is nowhere prescribed.

After reviewing all the facts the committee says :

"We can not refrain from again declaring it to be our opinion that it is far better that some definite period should be established in each State ; that the period ought not to be less than two years ; and that a period of three years is much to be desired."

On the subject of admission to the bar upon diploma, the committee says :

"Your committee has heretofore expressed the opinion that it is not advisable that the diploma of law schools should admit to the bar. . . . It is not in the real interest of the schools, nor in that of their graduates, that they should be invested with any such power."

It may not be unprofitable to summarize a few points in the movement for a higher standard of legal education in Georgia and in the country at large.

1. When any period of time has been fixed as a requisite for the study of law, that period has been made the same, both for those attending law schools and those preparing otherwise, for the State examination. Thus, in the propositions hereinbefore mentioned as submitted to the second, third, fourth and fourteenth annual meetings, the period of study suggested by the able committees making the reports was intended to apply both to those studying privately and to law school graduates.

2. In all the States that have legislated on the subject of prescribing a period of study, two years is the minimum time that has been so prescribed.

3. Representatives of law schools have always stood ready to advance their standard to the highest point practicable, recognizing, however, that their action was necessarily limited by the condition of the law in regard to the State examination. Thus, at the beginning of the history above set forth, Mr. George Dudley Thomas, rep-

representing the Law School of the State University, indicated his readiness to surrender the right of that school to have its diplomas admit to the bar whenever a reform of the law in other directions made this course reasonable.

The action of the trustees of the University in raising the law course to a two-years course antedated the action of the Association on that subject. Judge John P. Ross, expressing the conviction that a two-years course of study was necessary, whether in a law school or otherwise, indicated his willingness, while a member of the faculty of Mercer University, to advance the standard of that school to a two-years course whenever the Legislature prescribed such course for those coming to the bar by the other method.

4. The Association has committed itself by action twice repeated to the proposition that a proper legal education, if sought in a law school, can not be obtained by less than a two-years course of study.

Compare for a moment the situation of a student in a law school and a student in a lawyer's office. I speak by way of illustration of the Law school of the State University, because I am familiar at present with that institution alone. The Dean of the Law School meets each class two hours per day, in the morning and afternoon, and gives his entire time and attention to the work of the school. Another professor meets the classes the same number of hours, and gives almost his entire time and attention to the school. In addition, there are four other professors whom the students meet on special topics. The law school is an integral part of the University. An atmosphere of study surrounds it. The students have the benefit, not only of the University library, but of a law library. Moot courts are held; exercises in pleading are required; and the students are given an opportunity to attend the sessions of the city court, the superior court, and the Federal court, at Athens. In addition to the daily quiz in the lecture-room, frequent written examinations are held covering the subjects of the course, which, by the way, is much broader than that prescribed by the law of the State. These numerous examinations are followed by a final examination. All these surroundings constitute an environment for

study which is as favorable as it possibly can be. Now, the Association is committed to the proposition that under this favorable environment a two-years course of study is necessary to legal education.

Compare a student in a lawyer's office. If he is in the office of a lawyer who is not busy, it will at once be admitted that his location is ill-advised. In fact, it may be presumed that a law student would not pursue the study of law except under some lawyer who is of sufficient standing at the bar to be a busy practitioner. If he is busy (and the more competent he is the busier he will be), he can give his student only a hurried and occasional interview on the subject of his studies. The student in the office is liable to the numerous interruptions of a busy lawyer's office. He has not the class inspiration; no atmosphere of study surrounds him.

Can it be said that if the law school environment requires two years for a legal education, the law office method can possibly suffice with less? To ask the question is to give the answer. And yet, the present law stipulates for no study period whatever as prerequisite to admission to the bar through the State examination.

All praise must be accorded to the able Board of Examiners, who have administered the law faithfully and efficiently, and who, although the examinations can not be made public, have, according to common understanding, been gradually making them more and more adequate as tests of legal preparation; but the great inequality of the law as between the law school method and the statutory method was strikingly emphasized by the almost ludicrous incident which some time ago was published in the press of the State, namely, that a young man had passed the examination after thirty days' study. His admirers were so unaware of the bearing of this fact that it was published as evidence of exceptional fitness for the bar. Numerous instances are known where the applicant has passed the examination of the committee after studying during six months, or less.

The great value of the lengthened period of time as a prerequisite to admission to the bar is not simply its exaction of mental preparation, but the moral test which it imposes.

Many young men, attracted by what appear to be the rewards of the profession and the political distinction which its members win, rush to the bar without being really fitted in character or capacity for the profession. Having been once admitted, their pride is enlisted and the temptation is to continue at all hazards. The presence of men of this type tends to lower the standards of the profession. Now, a time limit is a moral test, a sifting process which would eliminate from the ranks of the aspirants for the bar many men who are not fitted for it. The probability is that if a two-year period was fixed, only those who were qualified by earnestness of character and otherwise, to enter the profession, would persist in their preparation.

What then, briefly, are the conclusions to which this review of the whole subject irresistibly leads?

In my judgment (without assuming to bind by this expression of opinion any one but myself) they are these:

1. Requirement in all cases of a two-years period of study.
2. Upon this being done, the right to be admitted to the bar on diploma to be repealed.

Admission by diploma should certainly be retained unless the first change is made; for legislation which affected the law school and left the other method untouched would place the emphasis of the reform where it is least needed.

The legislation embodying these conclusions might well prescribe specifically the terms of a legal education, both by the law school method and the law office method; in the former case prescribing at least a minimum number of hours for regular meetings of professors and their classes, and in the latter case a minimum number of conferences between student and preceptor. The law schools should be those only which are connected with a chartered university or college.

With legislation of this kind the able Board of Examiners could safely raise the standard of the examination. Since, however, it is difficult for any examination to test the value of a two-years period of study, it would no longer be desirable to have the examination occupy a single day. To do this would make it not only an intellect-

ual test, but a physical test, and in the latter aspect it would be unfair to some of the applicants. The examination might be conducted day by day, the student not knowing until the second or third day the questions then to be propounded.

LEGAL ETHICS.

The committee reports on this subject have been received at almost every meeting of the Association. The result has been that the subject has been thoroughly canvassed, and the principles of legal ethics have been very completely defined. A Code of Legal Ethics was prepared by the committee at the fifth meeting (5 Report, 99), and ordered to be printed and distributed to all the members of the bar in the State. Perhaps the most valuable contribution on this subject was Judge Bleckley's "Truth at the Bar," which is thought to be the most philosophical statement of legal procedure extant. The Association ordered three thousand copies of this address printed for general distribution.

The only "grievance" that I have to urge against the Association is its inactivity through the Committee on Grievances. This committee is intended to make efficient the work of the Association in respect to legal ethics. The duties of the committee are defined in the fourth by-law, as follows:

"A Committee on Grievances, who shall be charged with the hearing of all complaints which may be made in matters affecting the interest of the legal profession, or the professional conduct of any member of the bar, and the administration of justice, and to report the same to the Association with such recommendations as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against such offenders and to such extent as the Association may order, the cost of such proceedings to be paid by the Executive Committee out of moneys subject to be appropriated by them."

There is no other committee in whose definition of duties there is so distinct an implication that the committee is appointed to do something. It is entrusted with large power, its jurisdiction extends not only to members of the Association, but to any member of the bar, and generally to complaints affecting the administration

of justice. The committee is also armed with the sinews of war, and is, in fact, the only one to which the by-laws make an appropriation.

Now, it can not be said that there has been no material that might have been brought before this committee. It is notorious that during the existence of the Association grand juries have dealt with matters coming within the scope above outlined. What has been done by similar committees in other States is set forth in the address of the President of the Association for the year 1888, and what has been more recently done has been mentioned in a valuable summary of work of the other Associations prepared by the present secretary.

Some activity on the part of the Association through this committee would do more to establish the Association in public confidence than any other work it could undertake.

REFORMS IN CRIMINAL LAW.

Not all the reforms advocated by the Association have been embodied in legislation, but it is not among the least worthy "achievements" of the Association that it has attempted to remedy some of the most glaring defects in the administration of criminal law; and to that end has done all that the Association can do. It has pointed out these defects and appointed committees to urge the passage of amendatory laws upon the General Assembly. The subject of mob law has received due attention, especially in Judge Bleckley's address, entitled "Emotional Justice," and in that of Judge Spencer R. Atkinson, entitled "Shall Justice be Judicially Administered?"

The Association has urged a change in the criminal law so as to permit criminal pleadings to be amended, and so as to remove the inequality now existing between the State and the defendant in regard to the challenges of jurors. The committees of the Association have prepared bills upon this subject and brought them to the attention of the General Assembly; and thus the Association has thrown squarely on the Legislature the responsibility for some of those miscarriages of justice which are pleaded as excuses for mob law.

OTHER MATTERS.

In a single paragraph must be condensed a brief reference to some additional lines of activity undertaken by the Association. Through the Committee on Interstate Law efforts have been made, and are being continued, to bring about uniformity of our statutes with those of other States, relating to matters of common interest, such as the mode of attestation of deeds, etc. The work of the Committee on Memorials, if prosecuted continuously under the direction of the Executive Committee, will result in securing the biographies and pictures of the distinguished lawyers of the past, the reputation of some of whom is fast becoming a vanishing tradition. The appointment of a committee to aid in securing relief for the Supreme Court concerns an important movement now in progress.

LITERATURE OF THE ASSOCIATION.

More important than any single utility of the Association has been the creation of a new species of legal literature. No member of the Association can fail to contemplate with pride the eighteen volumes of the reports of its proceedings. These reports are most highly esteemed and are greatly sought in other States. They contain monographs on legal topics, and valuable contributions to legal history, to the discussion of public questions, and to the literature of the law. The Association has established a library in the State Library at Atlanta, containing not only its own publications, but those of the American Bar Association, and, so far as they can be procured, of the bar associations of the other States of the Union. These rich resources have been made available by means of the carefully compiled index prepared by the secretary. I trust that an annual résumé and current index of "What the Others are Doing" will be a permanent feature of the annual program.

CHIEF VALUE OF THE ASSOCIATION.

Every man is greater than his achievements. This is well expressed in Browning's "Ben Ezra":

"Not on the vulgar mass
Called work must sentence pass,

Things done, that took the eye and had the price ;

 But all, the world's coarse thumb
 And finger failed to plumb,
So passed in making up the main account ;
 All instincts immature,
 All purposes unsure,
That weighed not as his work, yet swelled the man's amount.
 Thoughts hardly to be packed
 Into a narrow act,
Fancies that broke through language and escaped :
 All I could never be,
 All, men ignored in me,
This, I was worth to God, whose wheel the pitcher shaped."

The thought so exquisitely expressed in these lines is as true of the corporate being as of the individual; and so, in conclusion, I would specify as the chief significance of the Association the fact of its existence, its vitality, its purposes and its influence.

It counts for much that the members of the bar do not look upon their profession merely as a bread-winning occupation, content to cry "great is Diana of the Ephesians, for by this craft we have our living." It counts for much that they turn aside each year from the current of their busy affairs to attend the annual meetings; it counts for much that they labor with painstaking care upon the papers and reports which they bring before their brethren, thus expending unselfishly their time, which is the "lawyer's capital"; it counts for much that in this way they make acknowledgment of the public relations of the profession. By his services as a member of the Association, each one is endeavoring to pay his debt to his profession, and by their corporate and aggregate labors, the Association is endeavoring to discharge its debt to the public for the large powers which are conferred upon it, and for that continued vote of confidence which the public bestows upon the profession by entrusting to its keeping not only the most important private interests, but the weightiest public concerns.

APPENDIX D.

REPORT OF THE COMMITTEE ON MEMORIALS.

PREPARED BY
Z. D. HARRISON.

(A)

JUDGE C. C. SMITH.

Christopher Columbus Smith was born in Telfair county, Georgia, on the 31st day of July, 1851. His father was Christopher Columbus Smith, and his mother, before her marriage with his father, was Miss Annie McEachern. He was educated in the common schools of his native county. In 1877 he graduated from the law school of Mercer University, and during the same year was admitted to the bar and located in the village of Scotland, in Telfair county, for the practice of his profession.

In 1882 he was elected to fill the unexpired term of Tom Eason, who had resigned as solicitor-general, and was then elected for the full term of four years.

In 1887 he moved to Hawkinsville and formed a copartnership with J. H. Martin, under the firm name and style of Martin & Smith, for the practice of law. This copartnership continued until he was elected judge of the Oconee Circuit in 1892, which position he held for two full terms of four years each.

He was selected as the Democratic presidential elector for the 3d Congressional District when Hancock and English were the Democratic nominees for President and Vice-President, which was the only political position he ever held.

He was tendered, by Gov. W. Y. Atkinson, the position of prison commissioner, but declined.

He was a faithful and consistent member of the Methodist Church, with which he united twenty-three years before his death.

On the 28th of February, 1894, he was happily united in marriage to Miss Mattie O'Daniel, daughter of Dr. William O'Daniel of Twiggs county, Georgia.

He died on the 29th day of March, 1902, and was buried in the O'Daniel cemetery, in Twiggs county, by the Masons, of which body for a great number of years he had been a most highly esteemed member. He left surviving him his wife and one child, Christopher Columbus Smith, Jr., aged four years.

He was familiarly called and known as "Cap." Smith. Of him it may be truthfully said duty and right were the guiding stars of his life. As a public official, his first aim was to know what was right and his duty, and then discharge it without fear, favor or affection.

In all his dealings as a man and as an official he was high-toned and honorable. He was genial and generous. His moral character was pure and clean.

No man was ever truer to his friends or had more loyal friends than he.

(B)

ROBERT FALLIGANT.

Our lamented brother, Robert Falligant, was born in Savannah, Georgia, January 12, 1839.

His native city was the theater of his life's joys, sorrows, ambitions and successes.

In its schools was laid the foundation of a broad education. This he was completing at the University of Virginia when the people of that State met in convention to consider the question of secession. Sprung from ancestors famous for courage and fearlessness proved on many battle-fields, we are not surprised to learn that the young Falligant was one of the Student Company

of the University whose mission was the seizure of Harper's Ferry. Later as a member of the Albemarle Artillery he spent four years of his young manhood in the active service of his beloved Southland.

At the close of the war he returned to Savannah and devoted himself to the study of the Law. He was admitted to the bar January 17, 1866. In after years he formed a partnership with his old preceptor Judge Wm. Law.

His public career was a most honorable one. In 1882 he was called to represent Chatham county in the lower house while in 1884 he went to the Senate from the First District. The State continued to honor her loyal son, and in 1889 he became judge of the Eastern Circuit, which position he held until his death, January 3, 1902.

His private life was above reproach.

His intellect, his wit and humor, his gentleness, his genuine hospitality—these, and many other lovable qualities possessed by him combined to form a rarely attractive nature.

It is to be hoped that a more adequate sketch of the life and character of this rare man may hereafter be presented to this Association.

(C)

WALTER SCOTT CHISHOLM.

One year ago Walter Chisholm stood in our midst a well-equipped lawyer, with every prospect of a long and brilliant career. Soon thereafter his health became impaired by overwork. The strain had been tense. It was slackened, but not until it was too late. The power of recuperation had gone. To another forum he was soon to be called. He lingered a while, loving and beloved, and then departed in the early spring of 1902. He was born in Savannah thirty-five years ago and had not lived elsewhere. Richly endowed by nature, and reared in an atmosphere of refinement and culture, he was tireless in his

efforts to attain the high ideals and standards fixed by his distinguished ancestry, and he succeeded. In the short life vouchsafed to him hereached the summit of professional success. He was admitted to the bar in 1888 and began the practice of law in the office of Chisholm & Erwin, the senior member of that firm being his distinguished father. On the death of his father in 1890, he became the partner of Mr. Robert G. Erwin and Mr. Fleming G. duBignon, and on the dissolution of that firm he formed a partnership with Mr. Wm. L. Clay under the firm name of Chisholm & Clay ; thus becoming the senior member of a firm which represented as general counsel some of the largest railroad and other corporate interests in the State. This partnership continued with its emoluments and responsibilities until his death.

As an advocate Mr. Chisholm was earnest and impressive, always faithful to his clients, fair and honorable towards his adversaries.

As a member of this Association he stood for the highest standards of the profession, and at all times demeaned himself according to its ethical rules and the dictates of an enlightened conscience.

(D)

PORTER KING.

The career of a strong man, faithfully serving Church and State, was cut short when Porter King died in November, 1901. Hon Porter King, deceased, formerly of Marion, Ala., was his father. General Edwin King, prominent among the early settlers of Alabama, was his paternal grandfather. His mother was Miss Calender Lumpkin, daughter of Joseph Henry Lumpkin, the first Chief Justice of Georgia.

Porter King was born in 1857, in Alabama, graduated at Howard College and read law at the University of Virginia. He came to Georgia early in the eighties and engaged in the

practice of law as a partner of Capt. Henry Jackson. On the dissolution of that firm he became a partner of C. L. Anderson under the firm name of King & Anderson, and continued such until his death.

He loved his fellow-men, and exemplified that love by faithfully fulfilling his obligations as a member of the Baptist Church and of its Board of Missions, and by active participation in the work of the Masonic fraternity. He was also a Knight Templar and belonged to other fraternal organizations, in all of which he delighted in rendering obedient and cheerful service.

As mayor of the city of Atlanta he exhibited administrative and executive ability of the highest order, and as representative of Fulton county in the Legislature of Georgia he served his constituency and the State with conspicuous devotion and fidelity.

The limit of this report is entirely inadequate to delineate the character and narrate the achievements of such a man.

APPENDIX E.

BIOGRAPHICAL SKETCH OF HON. NATHANIEL J. HAMMOND.

BY Z. D. HARRISON, OF THE ATLANTA BAR.

READ BEFORE THE NINETEENTH ANNUAL SESSION OF THE GEORGIA BAR ASSOCIATION AS A PART OF THE REPORT OF THE COMMITTEE ON MEMORIALS, WARM SPRINGS, JULY 3, 1902.

There is an odd custom among the Japanese of setting apart one night in every year to making a Feast for the Dead. On every table food is placed and the lamps are lighted on all the watercourses, and tradition tells us that the dead come trooping back to the places they loved, and are ministered to and made happy.

We cannot recall our dead, and yet it is by no means futile to set apart now and then quiet hours dedicated to those great ones who have passed on out of hailing distance into the vast Beyond. And in that company of all noble souls who constitute what George Eliot has called "the choir invisible,"

"Those immortal dead who live again
In minds made better by their presence
And with their mild persistence urge men's souls
To vaster issues,"

in that heavenly choir, "whose music is the gladness of the world," lives our erstwhile friend and fellow-worker, Nathaniel J. Hammond. To recall and contemplate the lives and characters of such men lifts our minds to nobler purpose; for the memory of such lives constitutes the richness of our inheri-

tance, it is a part of the accumulated wealth of our citizenship, the pride, honor and glory of our profession.

Colonel Hammond has too lately left us, we are too near to him in heart, in affection and in point of time, to get anything like an historical perspective of the man and justly estimate his public services. Perhaps in the school to-day is the child who, coming of age, shall write the history of the Georgia Bar, and give to him a permanent place among the great names there. My task is a very different one. I shall only attempt to sketch some of his characteristic traits for the sake of the love that we bore him and the value of his life as an example, for it is the fact of such men having lived that makes it great to live; it is lives such as theirs that give to our common life dignity, nobility and grandeur.

Carlyle says that the chief question to ask concerning any man is, What is his religion? By that he does not mean, to what church does he belong? to what ecclesiastical dogma does he subscribe? but what does he practically believe and lay hold on as the central truth of this so perplexing and so marvelous a universe? Now, Colonel Hammond was what is known as "a consistent church member"; but, far more than this, the whole tenor of his daily living proclaimed that, with Whitman, he could say:

"And I have dreamed that the purpose and essence of the known life,
the transient,

Is to form and decide identity for the unknown life, the permanent."

While here he lived as if living in eternity, and life's responsibility in the light of its infinite possibility was ever present with him. I do not mean, of course, that he was always grave. On the contrary, he was a man easily entertained, entering cordially into innocent social recreations, keenly alive to joy and beauty; but this conviction of the eternal significance of the present, held deep down in his heart, gave him steadying power, sanity and outlook.

And so his religion, which was a religion of purpose and

activity, found expression in his work. With all his mental capacity and broad culture we cannot think of Colonel Hammond as anything but a lawyer. He was born for the law, and to him the law was more than a means of livelihood: it was justice and right embodied in a social institution, and to the task of maintaining it in its integrity and making it effective among men, he gave himself with singleness of purpose and untiring zeal. Such devotion brought inevitably its recognition and rewards. He was solicitor-general, supreme court reporter, attorney-general and congressman, and in every office of public trust he discharged his duties with fidelity and efficiency.

Other work of a special and delicate character he was called upon to do: he was chairman of that most important commission that adjusted the controversy between the State and the Western and Atlantic Railway Company; twice he was a member of the State Constitutional Convention, once in 1865 and again in 1877, and to him was referred the sole supervision of the Code of 1873. These large trusts were reposed in him because of his legal acumen, intimate knowledge of the law and superior intellectual ability; because he was known to be a careful man, a conservative man and one to whom the law was a very sacred thing. He recognized, of course, that as a human institution the law had its imperfections, but he would put down uncompromisingly mob violence and ward off the blood-red hand of the revolutionist, while "freedom slowly broadens down from precedent to precedent." His attitude towards the law may be summed up in that sentence from an address he made before this Association, when, in speaking of the Supreme Court of the United States, he said: "The Court may not always please all, but surely it is the best creation of our scheme of constitutional government; it is the ark of the covenant in which are kept the tables of the law."

And now, having seen what was Colonel Hammond's posi-

tion on the two great questions of religion and law, let us see what was his attitude toward a third great human interest—education. He saw very clearly that education—the education not of a few, but the education of all—was the permanent concern of a democracy; that at the heart of our modern civilization is a little child; neglect that child, the future is jeopardized, rightly educate that child and the national welfare is assured. So at all times he was ready to spend and be spent in the cause of public education. For years he was a member of the board of education of the city of Atlanta, and the common school had no more ardent advocate and faithful champion than he; and yet at the same time he was the firm friend of the college and the university, and from 1872 forward was one of the trustees of the University of Georgia, and chairman of the board at the time of his death, and ever his voice and pen and influence were at the University's service. For Colonel Hammond saw the truth that Chancellor Hill has given the following clear expression to: "While the higher education is not possible to all, yet it is not to be thought of as the special privilege of the few, but rather as a trust to be enjoyed by those few for the benefit of the many. And furthermore, this higher form of education is necessary to keep all subordinate forms of education rational and wise and sweet."

Colonel Hammond himself was a university man; yet knowledge with him was never an end, but to be acquired simply as a means and instrument of social service. His own learning was broad and varied; not the minute learning of the scholar, but rather the general culture of the man of the world whose knowledge has been assimilated and blossomed into character. His ideal of education was social efficiency. His ideal man was the useful man, the man who knows how to work and is ready to work unweariedly for large social ends. He might have taken as his own that motto he once quoted in an address to a body of young students, the motto

that Thomas Carlyle wrote above his burning candle, "Terar dum prosum." (I am willing to be consumed so I may be useful.)

Certainly the motto found daily embodiment in his life—to every duty of church, profession and society he gave himself unreservedly and unstintingly. His capacity for work was enormous, his diligence unfailing—and then, just in the midst of his usefulness, when his intellectual vigor was at its height, Death, "the dark mother, always gliding near with soft feet," took him gently by the hand and led him out into the unknown.

But I believe that when he cast off the old moorings and put out to sea there was no fear in his soul.

"O my brave soul!
O farther, farther sail!
O daring joy, but safe!
Are they not all the seas of God?
O farther, farther sail!"

"Are they not all the seas of God?" This had been the loadstone of his life, the glad confidence that had linked present and future in one harmony of endeavor and achievement.

In this connection let me recall to you the words with which Colonel Hammond closed his last public address, an address delivered before the Atlanta College of Physicians and Surgeons, not three weeks before his death, and which for general loftiness of tone was well worthy of being the crowning effort of his life. The closing words of this address take on a deep significance and singular appropriateness when we remember that they were his last public utterance. Let us cherish these as the last admonition of a great and good man. The words are these: "So living, we will take care of our bodies until the time comes when we will pass through life in such confidence that we may say, 'Yea, though I walk through the valley of the shadow of death, I will fear

no evil.' For the shadow will pass away, and upon our enraptured souls will break the light of a beatific vision more glorious than human hearts can crave or imaginations conceive."

Thus briefly I have tried to recall those qualities of intellectual vigor and accurate legal knowledge, united to a broad culture and an unerring perception of the really great things in life, with unfailing championship of the same, that made Colonel Hammond a distinguished figure at the bar and in our civil life during his years of public service; but those other qualities of the man, of purity, of gentleness and of gracious sympathy that endeared him to his intimate friends and immediate family, I have passed over as too sacred to be dealt with in any public way, and yet I cannot close without saying that it seems to me the inscription on the tomb of Haynes, in Charleston, S. C., put there by a bereaved wife, might fittingly mark the last resting-place of Nathaniel J. Hammond. No more beautiful words were ever entrusted to the keeping of marble slab or bronze tablet. The inscription reads: "It is the smitten heart that would relieve its anguish by this record of his rare virtues, his real nobleness, his incomparable excellence; that heart alone can know how far the wisdom of the statesman, the eloquence of the orator and the courage of the hero were transcended by those sublime qualities that made him the idol of his wife, the pattern of his children, the guide of his friends, the honest, incorruptible patriot."

APPENDIX F.

THE STATE BAR ASSOCIATIONS IN 1901.

PAPER BY

ORVILLE A. PARK

Of the Macon Bar.

SECRETARY OF THE GEORGIA BAR ASSOCIATION.

In a review of the reports of the Bar Associations of the United States which I had the honor of presenting to this Association at its meeting in 1899, I took occasion to speak of the great value of the literature being annually produced by the associated effort of the legal fraternity—a literature unique in its character, and whose merit is becoming more and more recognized as its production increases.

A distinguished member of the profession, Judge Hagerman, of St. Louis, addressing the Kansas Bar a few months ago, observed that "In all the realms of existing legal literature there cannot be found a richer reservoir of everything pertaining to the interests of our profession than in the numerous annual publications of the State and territorial bar associations and of the American Bar Association. We find there speeches, addresses and papers by the most eminent of our profession here and in other countries, and reports and debates of the highest order. From them we can gather a consensus of opinion (as well as divergent views) on many questions affecting our profession. From the clash and conflict of mind meeting mind, much truth has been and much more will be evolved."

The reports abound in thoughtful, well-considered and admirably written addresses, monographs and papers on a variety of subjects embracing most of the fields of literature—law, history, biography, economics, governmental science, letters, and an occasional drop into poetry after the manner of Mr. Silas Wæg.

But as interesting as are these children of the professional brain, of still more interest are the efforts of the Bar to purify and uplift the profession, and to better the jurisprudence of the particular State in which the fortunes of its members are cast and of our common country. "Nothing has been done by the Bar of the United States so calculated to purify its practice or to elevate and ennoble its aims as the formation and maintenance of the various Bar Associations," said Mr. Blackford of Virginia, addressing the North Carolina Bar. It is this work that gives value to the Bar Associations, and an account of this work possesses an especial interest for the true lawyer.

GROWTH OF THE ASSOCIATION SPIRIT.

The year 1901 saw a gratifying growth and development of the Association idea and spirit. At no time since the organization of the Bar of New York State, twenty-five years ago, have the Associations been so strong, so numerous or so effective as at present. During the last three or four years several State Associations have been born, most of which are infants only in the number of years of their existence. Some that were moribund have been revived and begin their first works over again with renewed vigor. While most if not all the older associations seem with increasing years to increase also in honors and usefulness.

SCOPE OF THIS PAPER.

The Secretary of the American Bar Association reports State Bar Associations in all the States of the Union except California, Florida, Massachusetts, Mississippi, Nevada and

Wyoming; Territorial Associations in New Mexico and Arizona, and an Association in the District of Columbia, making forty-two Associations. Two of these, however, Connecticut and South Carolina, seem to be either already dead or else *in articulo mortis*.* The reports of eleven of these Associations for 1901 have not as yet been published, the secretaries writing in most cases that the matter is in the hands of the printer. Three other reports are of preliminary meetings for organization and are of but little general interest. This paper will endeavor to give some insight into the others.†

JOHN MARSHALL DAY.

For the first time in the history of the civilized world, on February 4th, 1901, there was held throughout our country a celebration in honor of the elevation of a member of the Bar to a seat upon the Bench. No single event in our nation's annals so well illustrates the character of our institutions, the supremacy of law, the dignity of the judicial office, the unity of the Bar of our country. For one day it was remembered that John Marshall of Virginia, "the expounder of the Constitution," had one hundred years before taken his seat, as Chief Justice, on the bench of the Supreme Court. This imposing celebration suggested by the Illinois State Bar Association, and conducted under the auspices of

* Since the above was written a report of the South Carolina Association for 1902 has been received, the Association having been revived after ten years of inactivity.

† The Reports herein reviewed are, with a few exceptions, of meetings held in 1901. Some of the Associations held their annual meetings early in the year, and wherever the reports of these meetings for 1902 were accessible, I used them instead of the 1901 reports. The paper refers to several of the Associations which published no reports for the past year, the facts being obtained by correspondence with the secretaries and from the "Summary of the Proceedings of the State Bar Associations" compiled by John Hinkley, Esq., Secretary of the American Bar Association, and published in the last report of that Association. I return thanks to the secretaries for their uniform kindness in sending me the reports and furnishing information in regard to their Associations.

the American Bar, "brought together the greatest assemblage of lawyers and judges which the world has ever witnessed," quoting the language of Adolph Moses, with whom the idea originated. The bench and bar of every section and of almost every State of the Union, as well as the President, the Congress, the law schools, most of the universities, and a large number of the public schools participated in this centennial. More than five hundred addresses, papers and responses to toasts were delivered. The list of speakers embraces Justices of the Supreme Court of the United States, eminent Judges of the State and Federal Courts, United States Senators, and the leaders of the Bar; while every phase of the life, character and services of the great Chief Justice, his notable decisions, the times in which he lived, were admirably discussed by these masters.

It is but natural that such a celebration in which the Bar took so prominent a part should be an important factor in shaping the thought of the meetings of the Associations following soon after. In several of the States the annual meeting was combined with the John Marshall Centennial, most of the addresses being devoted to Marshall. Among these Associations may be mentioned Indiana, Kansas, Maine, New Hampshire and South Dakota.

THE LEADING ADDRESSES.

Not only did a number of the Associations devote a large part of their annual meeting to Judge Marshall, but the interest awakened by the centennial is manifested in the selection of the subjects for several of the most interesting of the addresses.

"The Case between Jefferson and Marshall," by Judge U. M. Rose, of Little Rock, before the Colorado Bar, is an exceedingly fascinating account of the differences, personal and political, between Jefferson on the one side and Hamilton and Marshall on the other; all patriots, all earnestly and

honestly laboring for the good of the common country, and yet Jefferson believing Hamilton a royalist and traitor, and Marshall a judicial despot, while they in turn thought the author of the Declaration of Independence a Jacobin, an anarchist, and a demagogue. Judge Rose's analysis of the characters of these giants of an hundred years ago, and of the political history which they did so much to make is exceedingly interesting. Beginning with the time when Jefferson and Hamilton sat glaring at each other across Washington's Cabinet table, touching on the election of Jefferson to the Presidency, Adams's "midnight commissions," *Marbury v. Madison*, the trial of Burr, in short, the political and judicial history of that most important period the author charmingly tells. When we remember that the conflicting theories of the Constitution and its construction which was the basis of the case between them, is the rock upon which the two great political parties have split from that day until the present, the case between Jefferson and Marshall is given an added interest.

Colorado is treated to another eloquent portrayal of the character and public service of the man from whom Marshall drew much of his inspiration, the brilliant, versatile author of "The Federalist," Alexander Hamilton. Like most of the biographers of "the waif of the West Indies," Mr. Waterman seems to be imbued with the idea that in the formation of the government his hero was "the whole thing," and he holds him up to the admiring gaze of his hearers in quite a strong and attractive light. Henry D. Estabrook also contributes to our knowledge of the leader of the New York Bar at the close of the eighteenth century in an interesting paper on "The Lawyer, Hamilton," read before the American Bar.

Almost on the very day that the great lawyer and constructive statesman of New York is being considered by the Bar of Colorado, Aaron Burr, his political and professional

rival, to whose brutal malice Hamilton owed his death, is receiving attention at the hands of John S. Stevens, of Peoria, before the Illinois Bar. The character of this vain, jealous, cunning intriguer is well drawn. While his trial, presided over by Chief Justice Marshall, in which treason against the United States was judicially defined and limited, serves to bring in sharp contrast the character of the high-minded, conscientious judge with that of the distinguished though unscrupulous prisoner.

"In modest supplement to what was said (on John Marshall Day) in acknowledgment of the debt which we owe to the genius and virtue of the great Chief Justice," quoting his words, Hampton L. Carson, the biographer of the Justices of the Supreme Court, as an illustration of the evolution of national authority, recounts the admiralty case of "The Sloop Active," together with the various other proceedings, judicial, legislative and military, growing out of the efforts of the doughty old fisherman, Gideon Olmstead, to secure to himself and his associates the fruits of their own daring. The thirty years' struggle for the proceeds of the "Active," and her cargo, which had been seized by Olmstead and his three companions while prisoners thereon, and which in turn had been taken from them by a brig belonging to Pennsylvania when in sight of land, is one of the most remarkable legal contests in our history. It seems that Olmstead was clearly entitled to the prize money, though his right was not recognized by Pennsylvania, whose courts refused to yield to the judgment of the United States prize court in Olmstead's favor and directed that the money be paid into the State treasury. So weak was the government under the Articles of Confederation, that it was powerless to enforce the decrees of its courts, and Olmstead was like to have lost his prize; but the Constitution was adopted and Olmstead's hopes and his prospects revived. Again the United States Court declared him entitled to his prize, but on account of

the hostile attitude of Pennsylvania, no process was issued. It required a mandamus granted by Chief Justice Marshall to make the court move, and even then the militia of Pennsylvania was called out to resist the enforcement of the decree. Civil war was imminent. Pennsylvania, however, finally yielded, and Olmstead and the authority of the United States after thirty years triumphed. The impotence of the courts of the United States in the early days, as compared with their present power and efficiency as illustrated by the suppression of the great Chicago strike in 1894, shows how, in the language of Mr. Carson, "since the days of the Sloop Active the gristle has hardened into bone." While speaking of Mr. Carson, mention must also be made of his philosophical and scholarly address to the New Jersey bar on "A Legal View of the Question, Why I Am Obligated to Keep My Word?"

President Lewis, of the Virginia Association, reviews "Some Notable Cases in the Supreme Court of the United States," not only those decided by Chief Justice Marshall, but all the principal cases in which constitutional questions have been determined. To the student of American constitutional law and history this address is replete with interest and usefulness. The long list of these notable decisions cannot but impress us with the commanding importance of the Supreme Court as the guardian of the Constitution.

It was observed by Chancellor Kent that "the grandest and most imposing spectacle in the administration of human justice is that of the Supreme Court, tranquillizing all jealous and angry passions, and binding together this great confederacy of States in peace and harmony, by the ability, the moderation and the equity of its decisions." But this was said long before the "Insular Tariff Cases" were decided. Possibly had the great Chancellor lived to have read the opinions rendered in those cases and to have heard them discussed at the various meetings of the bar, he would have been led to modify his statements, for if we may trust some of the

distinguished lawyers who spoke upon the subject, these decisions have not had a very tranquillizing effect, peace and harmony have not been produced thereby, and some of the opinions are characterized by neither ability, nor moderation, nor equity. The views of the different speakers regarding these decisions are as variant and irreconcilable as are the opinions of the justices deciding them, which is certainly saying a great deal. Congressman Littlefield, of Maine, addressing the American bar, says these cases, "in the manner in which the results were reached, the incongruity of the results, and the variety of inconsistent views expressed by the different members of the court, are without a parallel in our judicial history." In an elaborate and able argument he takes the position that the opinions of the majority (if there was a majority who agreed on anything), and especially the opinions of Mr. Justice Brown, are contrary to principle, in direct conflict with precedent, out of harmony with all previous constructions of the Constitution, and inconsistent with themselves.

On the other hand, Judge McPherson tells the Iowa bar that the country is content with the decisions made, although by a divided court, and he concludes "that the majority opinion of Justice Brown may stand for all time, as the exposition of our strength and conscience of government, is my most fervent wish."

Joseph Shippen, of Washington State, believes that the difference of opinion among the justices is attributable to the following causes: "1. Ambiguity of language. 2. Misapprehension of the issue. 3. Weakness of attention. 4. Fear of the consequences. 5. Biases of Association." He does not undertake, however, to give us the result of the operation of any one or all of these causes on any particular justice. Indeed his address is almost entirely devoid of partizanship, and his analysis of the decisions remarkably lucid.

The President of the New Jersey Association, Vice-Chan-

cellor Stevenson, suggests a new point of view. The United States, he says, in common with every other sovereign State, has a great unwritten Constitution, which existed prior to the adoption of the written instrument which we call the Constitution and is superior to it. The written Constitution is no more than a *statute* instituting a system of government among the people of the States adopting it and such others as might thereafter be admitted. Porto Rico belongs to the United States as a sovereign nation under the unwritten Constitution. It has nothing to do with the written Constitution any more than with any other statute. He believes the decisions harmonize with this theory.

The writers agree upon only one proposition : that it is most unfortunate that a question of constitutional law of vast importance should be decided by a divided court, and that even the opinions of the majority are hopelessly irreconcilable. Nothing better illustrates the unique position of the Supreme Court as a part of the American system of government than that such a decision, so arrived at, should be the supreme law of the land, from which there is no appeal, controlling alike upon the government and the people.

In the professional life of the average lawyer constitutional cases are of rare occurrence and constitutional law is largely of theoretical rather than of practical importance. But when the members of the bar assemble in their own associations and take a more comprehensive view of their noble profession, leaving behind the dry-as-dust details of their every-day work, and the petty strifes of contentious litigants, constitutional law, that higher, nobler branch of the profession wherein the lawyer merges into the statesman, forms a fruitful field for study and meditation.

Judge Rose, of Arkansas, whose address before the Colorado association has already been alluded to, takes us back to the fountain-head in his splendid address to the Pennsylvania bar. In his own chaste, elegant and charming style

he delineates the character and manifold wickedness of that most detestable old scoundrel, King John, whose taking off had been accompanied "with an unparalleled dearth of tears." He describes the tyrannies, the cruelties, the outrages perpetrated upon the unhappy people of England by this monument of infamy, of whom his chronicler asserts, "Hell felt itself defiled by the presence of John." The uprising of the barons, the ever famous conference on the plains of Runnymede, and the immortal Charter "whose uncouth but grand old sentences, having taken the wing so of the morning, have incorporated themselves with almost every system of laws in Christendom,"—these are the materials which Judge Rose handles with a master hand; and as "the great product of the middle ages" is unfolded before us, we cannot but feel a deeper love of constitutional liberty which took its rise from this great source.

If to the barons in their contest with John, we owe the beginnings of liberty protected by law, it is to the lawyers that we are indebted for the preservation of that liberty from the days of Magna Charta to the present, if we can trust the judgment of Chas. M. Blackford of Lynchburg, speaking to the bar of North Carolina. One begins to understand why, in English-speaking countries, the law has always been regarded as so high and honorable a profession, when he has rehearsed before him those great struggles wherein the liberties of men hung in the balance, and where the lawyer at the bar and the judge upon the bench stood as a solid bulwark against oppression and tyranny of every sort, whether at the hands of an autocrat or of a still more despotic majority. Many principles of constitutional law, many highly prized rights of the citizen, which are now recognized as among our most important legacies of the past, were first asserted and maintained by a lawyer in defense of an individual client. Mr. Blackford has succeeded in grouping together a large num-

ber of such cases—monuments to the lawyers of the past, of which we of to-day may be justly proud.

It is quite natural that the members of a noble profession should find in its contemplation much of encouragement, and that, in their gatherings, the profession to which they have devoted their lives, should form the subject of many a discourse. The sacerdotal character of lawyers as "Priests of the Temple" engages the attention of Henry C. Niles, of Pennsylvania, addressing the Maryland bar. We are quite accustomed to the name "Temple of Justice," as applied to the court-house, and the comparison of the bar to the priesthood is not unusual. Mr. Niles, however, carries the analogy somewhat further than is wont, showing that in many important particulars the lawyer and the priest have much the same rôle to play, though the manner and the stage differ widely.

The Pennsylvania Bar evidently believes in high ideals and loves to dwell upon the dignity of the profession. We find another member of that bar, Judge Watson of Pittsburg, taking as his subject when addressing the West Virginia Association, "The Bar," and giving us a treatise on legal ethics. He insists that a profession which has done so much for mankind should maintain the prestige won, and stemming the tide of commercialism, preserve its character as a learned profession and not degenerate into a trade.

Hon. Hilary A. Herbert, speaking in his own State of Alabama, discusses "The Duties and Responsibilities of the American Lawyer in the Twentieth Century." Reviewing the great crises in our nation's history, he concludes that "the lesson that the nineteenth century teaches to the twentieth is that the supreme danger that lies in the pathway of our progress arises from the excesses that may result from the zeal of political parties." More general, more intelligent and more independent participation in politics by the best classes of our people will, in his opinion, overcome

this danger. The address is, however, rather from the standpoint of the statesman than the lawyer.

Charles Noble Gregory, to whom we had the pleasure of listening from this platform two years ago, introduces the Bar of Tennessee to Sir Samuel Romilly, the earliest apostle of criminal law reform. His life and labors, especially in the endeavor to abate the rigors of the common law in the matter of punishment, are told in Professor Gregory's usual interesting style, and from them he is led to suggest that improvement might be made in American criminal law by relaxing the severity of punishment and making it more certain and speedy. This idea of reformation in the administration of criminal justice, and of regarding the criminal as an unfortunate who should be cured of his criminal tendency rather than punished for his crime, finds considerable favor elsewhere.

We have a strong paper from the pen of Judge W. S. McCain of Arkansas, in answer to the question, "Ought Punishment for Crime to be Abolished?" Other papers on the same general subject are "Criminals and their Treatment," by Charles Curry of Virginia; "Pardons and Paroles," by Governor Stanley of Kansas.

"Our Place in the International Family" is the subject chosen by ex-Secretary William R. Day for his address in Ohio. The intimate connection of Judge Day with the Spanish-American war and the events immediately subsequent, which did so much to change the United States from a hermit nation to a great world power, lends an added interest to his words.

The tragedy at Buffalo, making a nation mourn, leads the New York State Bar to consider anarchy and its suppression. Assistant Attorney-General James M. Beck reviews the efforts made by the countries of Europe to sweep the red flag from their borders, but which have rather seemed to increase than to diminish the number of anarchists and the crimes attributable to them. The problem is rendered

more serious in America on account of our jealous regard for freedom of speech and of the press, and because—

“Wide open and unguarded stand our gates,
And through them presses a wild, a motley throng—
Men from the Volga and the Tartar steppes,
Featureless figures of the Hoang-Ho,
Malayan, Scythian, Teuton, Kelt and Slav,
Flying the Old World's poverty and scorn.”

“The solution of this question,” says Mr. Beck, “must in the last analysis rest with the detective rather than with the legislator. Preventive measures of an administrative character will be found most efficacious, and an indispensable feature must be international co-operation.”

Joseph A. Kellogg, also in New York, makes a valuable contribution to the subject, discussing the punishment of anarchists and means to prevent the spread of the iniquitous cult in our country.

Of course “Trusts” came in for a share of consideration. We have an address of considerable proportions on “Trusts and the Law,” by Charles M. Beck of New Orleans. A paper on “The Legal Status of Trusts,” by Charles Claffin Allen of St. Louis, and another on “The History and Evils of Anti-Trust Fire Insurance Legislation,” by W. H. Arnold.

New York seems to have a penchant for foreigners. At the meeting in 1901, Minister Wu Ting-Fang, of the Flowery Kingdom, delivered the address on “Chinese Jurisprudence,” while in 1902, M. Jules Cambon, the Ambassador from France, speaks upon the subject, “Des Relations de la Diplomatique Avec le Developpement du Droit International Public et Prive.” His excellency, either from a desire to preserve his character as a Frenchman, or it may be from a lack of fluency in the use of English, delivered his address in his native tongue. Fortunately for some of us the English translation accompanies the French in the published report.

Several of the State Associations, following the example of the American Association, require of their presidents ad-

dresses covering the noteworthy changes in legislation during the year. Some of these reviews are admirable, giving a comprehensive glance at the legislation of the year, state and federal, and noting its tendencies, its strength and its weakness. Indeed, legislation and the legislature occupy an important place in the thought of the bar. The lawyers seem to agree that there is an overproduction of laws; that too much time is devoted to local and special legislation, much of which is hurtful, and almost all of which could be far better accomplished by general laws; that too great a tendency towards paternalism is manifested; that much of the legislation is opportunist, considering only the needs of the hour; that it exhibits a want of deliberation, and is as a whole careless and slipshod. Among others the following papers on the subject will be found of interest: "Deliberate Legislation," by Carman R. Randolph, New York; "Special Legislation," by James R. Garfield, Ohio; "The Makers of the Law," by Lawrence Cooper, Alabama; "Legislation—Its Errors and Proposed Remedies," by James W. Owens, Maryland; "The Power of the State Legislature," by S. S. P. Petteson, Virginia.

PAPERS READ.

Time and your patience will not permit more than a passing reference to a very few of the papers of general interest read at the different meetings, in addition to those already incidentally alluded to. They cover a great variety of topics and many of them are worthy of serious and careful attention.

Among the strictly professional papers may be mentioned "The Supreme Court and the Present Bankruptcy Law," by William H. Hotchkiss, in which all the cases decided by the court construing the Act of 1898 are reviewed. The paper provokes considerable discussion in New York State; the Association seems to favor the amendment of the present

law along the lines of the Ray Bill. Oregon also is furnished "A Review of the Bankruptcy Law and Some Leading Cases which Have Arisen Thereunder," quoting the title of Thos. G. Green's paper.

Other technical papers are "Insanity as a Defense to Crime," "The Trust Fund Theory of Corporate Assets," "Legal Aspects of Hypnotism," "Disqualification of Judges in Certain Cases," "Evidence," "Law Reporting."

John H. S. Lee, of Illinois, discusses the question of how far a parent is criminally responsible for the death of a child resulting from a failure to procure medical attention, where such failure is occasioned by the religious belief of the parent, a question which the presence of "Elijah" Dowie in that State renders vital.

The American Bar, meeting in the great West, is introduced to two branches of law which have been almost entirely developed in that section, "The Law of New Conditions, Illustrated by the Law of Irrigation," by Platt Rogers, and "The Evolution of Mining Law," by Chas. J. Hughes, Jr.

The student of comparative jurisprudence will be interested in Rudolph Dulon's paper on German Law. In Germany the entire law is codified and there are no reports of decisions. Our familiar doctrine of *stare decisis* has no place in their system, each case being determined by an application of the different code sections to the facts regardless of what any other court may have held upon a similar record.

The biographer of Andrew Jackson, Col. A. S. Colyar, of Nashville, gives the Tennessee Bar some interesting anecdotes and incidents in the life of "Old Hickory." Another biographical sketch worthy of mention is that of Edwin T. Merrick, who, apparently fearful lest we should forget that the Supreme Court has had other Chief Justices besides Marshall, takes as his subject Roger B. Taney, whom he describes as "the greatest successor of the greatest Chief Justice of the United States."

"Assessments and Taxation," by Frederick Dumont Smith, "The Taxation of Private Corporations," by J. H. Pou, and "The Fundamental Principles of American Government Applied to Taxation," by F. A. Broomhill, are some of the papers on this ever-present and ever-pressing subject.

What has been accomplished by the different associations cooperating with the American Bar Association towards the securing of uniform legislation in the different States, is well told by W. L. Permenter addressing the Ohio Bar.

The relation of the legal fraternity to letters is considered in such papers as that of Geo. B. Rose on "Literature and the Bar," and that of S. W. Dana on "Law and Letters."

In addition to these and other papers of general interest, almost every report contains a number of chiefly local value, the discussion of some law or decision, the need of some reform in the jurisprudence of the State, some period of State history, reminiscences, biographical sketches and memorials, a varied and extensive local literature which, but for the Bar Association, would be entirely lost.

THE WORK UNDERTAKEN AND ACCOMPLISHED.

The declared objects of the several Bar Associations differ but immaterially. The constitutions of most of them state the purposes of the organizations substantially thus: "To advance the science of jurisprudence, promote the administration of justice, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the bar." At a recent meeting of the Kentucky Bar, called for the purpose of organizing a State Association, Mr. T. K. Helm read a paper on "The Procedure and Achievements of the Bar Associations of other States." After a long list of notable achievements accredited to the Associations, he concludes, "I could enumerate many other reforms that have been accomplished, but must be content with saying that the power for good of Bar Associations seems almost unlimited ;

that there is no point from the details of procedure to the regulation of municipal and private corporations at which they have failed to meet success." Let us see how well during the past year the Associations have fulfilled the purposes of their existence.

In nothing have the efforts of the Associations met with such signal success as in elevating the standard for admission to the bar. A few years ago, in almost every State, it was much easier to be admitted to the bar and nominally to become a lawyer than to become a physician, dentist, pharmacist or minister. Every mother's son who applied was admitted with little or no regard to his knowledge or qualifications. But the State Associations, under the leadership of the American Bar, have changed this in a large number of States. Most of these now have State boards of legal examiners and the examinations are no longer a farce. Eleven States require that the applicant for admission shall produce proof of having studied law at least two years. Many require a general education equivalent to a high school course. The law schools have generally adopted curricula requiring two, some three, and a few four years. Everywhere the tendency is towards stricter requirements. During the past year a number of associations report gratifying progress in this regard. Colorado succeeded in having the study period raised from two to three years. Maryland also secured a three years previous study requirement as well as a general educational qualification. North Carolina is content for the present with two years' study, and adds Legal Ethics to the required studies. Iowa gets a board of legal examiners and her law schools adopt a three years course. Missouri, Pennsylvania and Texas are all working for boards of examiners with good prospects of success. The Missouri bill takes away from the law schools the privilege of admitting their graduates to the bar. The report of the debate on this feature of the proposed law reads so much like the

one had last year in this Association on a similar provision as to make the two almost indistinguishable except for the names of the participants. The Supreme Court of New Jersey, at the request of the Association, has appointed a commission to examine the laws of other States and suggest a proper system for that State. In Vermont the Association conducts the examinations for admission for the Supreme Court. Prof. Lile, of the University of Virginia, brings in an interesting report showing the progress of the movement for higher standards for admission to the bar, and recommending for Virginia two years' previous study and a general educational requirement. Indeed in almost every association some effort is being put forth in the direction of elevating the standard.

But the Bar Associations stand not only for education and morals as qualifications for those who seek admission to the profession, but for honor, uprightness and ethical conduct on the part of those who have already been admitted to its ranks. Nearly all the associations have standing committees on grievances and legal ethics, whose duties are to call attention to such practices as affect the honor and integrity of the bar and to bring to justice recalcitrant members. During the past year Codes of Ethics have been adopted in Maryland and West Virginia framed largely after those previously adopted in other States. Iowa has a symposium on Ethics with papers covering different phases of the subject. The principal address in Rhode Island is also on the "Ethics of Bench and Bar."

The Colorado Association is pursuing a policy calculated to strike terror into the hearts of all legal offenders. Last year, through the efforts of this Association, five attorneys were disbarred. Prosecutions were also authorized in six other cases and were refused in five. During the four years of its history the names of eleven attorneys have been

stricken from the rolls and disbarment proceedings are still pending in seven cases.

Illinois also believes in getting rid of unworthy lawyers. The last report shows three disbarments during the year and four cases pending. Most of these cases were undertaken by the Chicago Bar Association, which seems to be especially active in these matters.

One case for disbarment was successfully prosecuted by the New York State Association.

North Dakota seems to be preparing for vigorous action, as it adopts a course of procedure in disbarment cases. North Carolina is also endeavoring to secure legislation enabling it to proceed against attorneys guilty of unprofessional conduct. Arkansas mildly recommends that steps be taken to rid the profession of unworthy members but takes no definite action.

The efforts of the Associations to reform the laws and better the administration of justice in their respective States differ necessarily according to the local conditions and needs. It is encouraging to note, however, that many of the problems which confront us are also pressing for solution upon our brethren in other States.

Georgia's Supreme Court is not the only one whose docket is congested. Nebraska devotes almost her entire session to measures of relief for her court, and is fortunate in getting the legislature to pass most of the bills recommended. In Arkansas the court is so far behind with its docket that a resolution is introduced asking the court to discontinue written opinions until it catches up with its work. The resolution, however, fails of passage. Michigan recommends the establishment of an intermediate court of appeals whose decision shall be final (except in certain instances) in cases involving less than one thousand dollars. The Michigan committee introduce figures to show that the court can only give four hours to the consideration of each case in the

present crowded condition of the docket. Colorado seeks to abolish the Court of Appeals of that State, and hopes by an increase in the number of judges of the Supreme Court to have that tribunal do the work of both courts. In Illinois the complaint is that the court calls the entire docket for oral argument and then divides up the cases and decides them. The Association believes that in such cases oral argument is of little avail, and it considers such argument, when given its proper weight, highly valuable both to the court and to the cause. Kentucky thinks the records in the Court of Appeals should be printed.

Amendments to the Constitution affecting the judiciary are discussed in West Virginia, North Carolina and New Jersey.

The Committee on Law Reform in Ohio recommends that an act be passed requiring the auditor to refuse to issue a warrant for any part of a judge's salary until an affidavit is made by the judge that all cases submitted to him for decision have been decided. After considerable discussion the recommendation is tabled. It may be noted, in passing, that in Ohio the judges are honorary members of the Association.

Michigan takes up the Justice Court problem where we left it last year, providing that the legislature be asked to abolish the fee system of compensation for justices of the peace, and that salaries be fixed for them ranging in amount according to the work done.

Oregon is so much interested in the jurisdiction of Justice Courts that a committee of fifty go to the legislature and secure the passage of the act desired.

The old State of Virginia and the new State of Washington, separated by a continent, are both investigating the Torrens System of registering titles to land. Michigan, too, takes favorable action on introducing the system in that

State. The Associations are entitled to the credit of having secured the adoption of the Torrens System in four States.

The movement for uniform State laws is advanced by the addition of several States to those who have adopted the "Negotiable Instruments Act," the Legislatures in all cases acting at the suggestion of the bar associations.

Minnesota and South Dakota have succeeded in convincing the legislatures of their respective States that the laws need revision and codification. In New York a committee of fifty is appointed to obtain legislation furthering statutory and code revision.

The Pennsylvania Bar is certainly not afraid of work. Its Committee on Law Reform submits as a part of its report a comprehensive act on the subject of boroughs intended to codify and supersede all the law on the subject. The Act covers sixty-seven pages of the printed report and seems to be an admirable piece of legal work. It meets the entire approval of the Association. The Ohio Association has a voluminous and carefully prepared report on a Municipal Code.

The Supreme Court of New Mexico honors the Association of that Territory by requesting it to revise the rules of court. This is the third time the Association has done this work, and the rules recommended have always been approved by the Court.

The Iowa Association adds to its machinery a section on Taxation, after the plan of the section on Legal Education of the American Bar.

New York takes steps for the erection of a statue of Chancellor Kent.

Kansas starts out on a campaign for new members, proposing to mail copies of its report to all lawyers in the State and to invite all reputable members of the Bar to unite with the Association.

The respect accorded the recommendations of the Associ-

ations is far from being the same in all the States. The General Assembly of Pennsylvania, for instance, passes without the change of a word seven different bills recommended by the Association of that State, together with the "Negotiable Instruments Acts," upon the simple statement that the Association was back of them. On the other hand a commission appointed in Illinois to reform pleading and practice, after eighteen months of laborious, painstaking and efficient work, sees the measures suggested by it "die from legislative starvation and neglect" without even being brought before either house for consideration. Tennessee, having been "turned down" so often by the legislature, seeks to find the reason and has a paper from a member of that body on "The Tennessee Bar Association and the State Legislature." The remedy suggested by this writer is to send the best lawyers to the Legislature, and for every member of the profession to throw himself in the breach and help to have the recommendations of the Association enacted, not trusting too much to committees.

THE GEORGIA BAR ASSOCIATION.

It is gratifying to note that our own Association is receiving most favorable attention elsewhere. The Secretary of the American Bar has included in the last report of that Association a "Summary of the Proceedings of the State Bar Associations." In this summary more space is devoted to Georgia than to any other Association with possibly one exception, and this report shows that our Association compares favorably in every respect with her sisters throughout the Union. In the paper by Mr. Helm, recounting the achievements of the Bar Associations, which has already been alluded to, Georgia is referred to by name oftener than any other Association. An examination of the addresses and papers read at our meeting last year discloses the fact that the intellectual feast spread before the lawyers of Georgia ex-

ceeds from almost every point of excellence that afforded the bar of any other State.

Unfortunately the members of the profession in Georgia have not given the Association that cordial support to which it was entitled, and its usefulness has been correspondingly diminished. It is nevertheless true, in spite of this, that the Georgia Bar Association stands in the forefront of the organizations of the profession in the country.

IN CONCLUSION.

Allow me to quote from the President's address delivered by Senator Manderson at the meeting of the American Bar in 1900. He says:

"We are pleased to note a constant increase in the number and a strengthening of the influence and power of the Bar Associations in States, judicial districts, counties and towns. Nearly three hundred have reported their existence to our secretary. They are the bulwarks of professional ethics, and the safeguard of our calling, having as their chief purpose the public good. They have elevated the standard of qualifications for admission to the Bar, promoted the revision and perfection of codes, reformed many defective statutes, brought about uniformity in many laws, aided the more perfect administration of justice and added to the literature of the country much matter to enlighten and to elevate."

APPENDIX G.

REPORT OF THE COMMITTEE ON INTERSTATE LAW.

Mr. President:

Your Committee on Interstate Law begs to report that the work of securing uniform State legislation is making fairly satisfactory progress. It is not expected that all the laws of the several States shall become uniform. The material and social conditions of the several States are so different, that absolute uniformity is neither practicable nor desirable. In order to obtain uniformity of legislation commissions on uniform state laws have been created by the different States. The commissioners meet in conference for the better accomplishment of the work. They are appointed under the laws of the respective States, with authority to confer with commissioners of other States, and recommend forms of bills or measures to bring about uniformity of law in the execution and proofs of deeds and wills, in the laws of bills and notes, marriage and divorce, and other subjects where such uniformity seems practicable and desirable.

Eleven conferences have so far been held; the first at Saratoga, for three days, beginning the 24th of August, 1892; the last at Denver, Colorado, in 1901, and the next conference will be held at Saratoga during the present year.

It is of the first importance to the people of all the States, that there should be uniformity in the laws which deal with economic relations, such as husband and wife, parent and child, guardian and ward, and master and servant. So, also, uniformity should characterize the statutes of weights and measures, the execution of deeds, mortgages and wills, the laws of descent and distribution, and of insurance, bills and notes. Thirty-three States of the American Union have united in the appointment of commissions. Appended to this report, and forming part of it, are the several forms of bills which have been agreed upon by the commissioners, and your com-

mittee recommends that the Standing Committee on Legislation from this Association will cause these bills to be introduced at the next session of the General Assembly of this State, and will urge their passage.

However zealous we may be of the rights of the States, it should not be forgotten that the end sought to be attained is without the aid of federal legislation, and by the action of the sovereign States. Too much cannot be said in favor of the full and carefully-prepared bill which is intended to codify the laws of bills and notes. This codification is the result of the labor of one of the ablest experts of the country. The work has been gone over by the commissioners, and the act has been passed by the following States: Connecticut, Colorado, Florida, New York, Massachusetts, Maryland, Virginia, North Carolina, Wisconsin, Tennessee, Oregon, Washington, Utah, North Dakota, Rhode Island, Pennsylvania, Arizona, and by Congress for the District of Columbia. It is confidently expected that this act will make a code for the English-speaking people, so that there will be substantial uniformity throughout the commercial world in the matter of the law of negotiable instruments. Your committee cannot press too earnestly the adoption of this act by the Legislature of our own State. Georgia is regarded as the foremost of the Southern States, and it is not a pleasant reflection to think that she is not abreast of her sister States in this wise and patriotic movement to simplify the law. The highest duty of the truly great lawyer is to mold and direct legislation, and it is to this Association that the Legislature of the State looks for intelligent and unselfish guidance and support.

Respectfully submitted.

P. W. MELDRIM,
T. M. CUNNINGHAM, JR.,
A. P. PERSONS,
MARION W. HARRIS,
Committee.

Attached to the foregoing report, and submitted as a part thereof, was the report of the Eleventh National Conference of the State Boards of Commissioners for Promoting Uniformity of Legislation in the United States, with the Forms of Bills recommended. Also the Negotiable Instruments Act and the comments of James Barr Ames and Lyman D. Brewster thereon.

APPENDIX H.

REPORT OF THE COMMITTEE ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

The Committee on Judicial Administration and Remedial Procedure, at the meeting of the Association held in July of last year, made a report containing suggestions for harmonizing Judicial Administration in this State, and embodying proposals looking toward uniformity and symmetry in the entire system.

So important and far-reaching are these suggestions that the Association decided to defer the whole matter of that report to the present meeting, in order to secure a general discussion and mature consideration thereof.

This being the case, it logically follows that this report should concern itself with the other branch of the committee work, to wit :

REMEDIAL PROCEDURE.

* "At a recent meeting of the American Bar Association Mr. Frank C. Smith called the attention of that body to the fact that, by a critical examination of the digest of all the cases decided by Courts of Review in the United States and Canada for one year, he had found that nearly one-half of the questions carried to and decided by Courts of Appellate Jurisdiction in this country were questions arising out of disputes as to the proper method of bringing before the courts the merits involved in the original differences. He said that he found also that in the States which had adopted the so-called 'reform procedure,' the points of practice were 48½ per cent., while in the States which

* Address of Prof. Roswell Shinn to Illinois College of Law.

had adhered to the common law, including the Federal tribunals, the points of practice were only 43½ per cent. Reform measures do not always reform.

"Assuming it to be proven that but a little more than one-half of the questions decided in Courts of Review have anything to do with the merits of the matter in controversy, it shows that one-half of the trial lawyers of the country do not know how to bring the merits of the cause to the attention of the court. It shows that in America to-day a knowledge of the *practice* is worth as much to the practitioner as his knowledge of all the other branches of the law together. It condemns us as a profession."

Since the adoption of the Uniform Procedure in Law and Equity, as provided in the Act of 1887, and since the regulation of pleading made by the Act of 1893, and the Acts amendatory thereof, our State has been practically under the "reform procedure." Sufficient time has elapsed for the profession to become familiar with this procedure. And it may be safely said that at present it serves the purpose intended fairly well.

Without obviating, but rather emphasizing the necessity for a knowledge of the principles of pleading, it has simplified procedure, eliminated unnecessary distinctions, and cleared the practice of much that was obsolete, "or thoroughly deserving to be so."

The committee, therefore, consider that any radical change in the present method of pursuing legal and equitable remedies and reliefs would be unwise. On the contrary it is suggested that a further enlargement of the present procedure be made.

In many cases before the courts, the cause of action having been set forth paragraphically, the defendant having admitted each paragraph of the petition, proceeds to set up his defense, which is in the nature of what at common law was known as a plea of confession and avoidance. Our Code declares that this is pleading "sufficient to carry the cause to the jury without any replication, or other course of proceeding." §5067.

The case now is in the position of an affirmative pleading by the defendant, and no formulation of issues thereon by the plaintiff. In other words, the plaintiff is let in, on the trial, to make out a case of which the defendant has no notice from the pleadings.

The committee suggests the adoption of a rule of pleading requiring the plaintiff to "meet with appropriate written pleading," to be known as a reply, "new matter set up by the defendant, not controverting the plaintiff's petition."

This is now discretionary with the court, and applies only in cases of petitions seeking equitable remedy and relief and of the answers thereto. §5050.

APPEALS.

The great and increasing volume of the business before the Supreme Court imperatively necessitates the decision of many causes without hearing oral argument. Without stopping to discuss the right of a litigant to be heard by counsel in the Supreme Court, suffice it to say that in many cases the court, even after most careful reading of written arguments, has based the decision on some ground, which was not the controlling question in the case.

At least 50 per cent. of the cases go to the Supreme Court on a refusal of the trial court to grant a new trial. It is believed that many, in fact the greater number of the cases which go up on a refusal to grant a new trial, would be finally settled in the trial courts, provided the right to appeal to a second jury in those courts were allowed.

The Constitution now declares that the Legislature may "provide for an appeal from one jury in the superior and city courts to another." Art. 6., sec. 4, par. 6.

The committee submits this suggestion for the consideration of the Association. Certainly the evil is glaring enough to demand a remedy, and this one may be worth a trial.

The only other feasible method of relieving the pressure on

the Supreme Court, except the establishment of an intermediate court, is the limiting of the reviewable cases by the amount of money involved. This leaves out of consideration any idea of abstract justice, and is purely artificial and arbitrary.

AMENDMENTS.

In the matter of amendments to pleadings the committee suggests that the law as it now stands is perhaps too liberal, and deprecates any action looking to the extension of the right to amend.

STATUTORY REMEDIES.

While the procedure in our State for obtaining statutory remedies is in the main admirable and complete, yet it is much to be deplored that the methods of procedure are as numerously diverse as the States of the Union.

The settlement of this matter, like the much-desired uniformity in civil procedure in all the States, is to be accomplished, if at all, by concert of action through some central organization like the American Bar Association.

This uniformity is, of course, most to be desired in those statutory proceedings peculiarly adapted to the needs of the business world, which is impatient of the distinctions made by State lines.

Such uniformity will be accomplished, not by abandoning entirely the methods of any one State, but by adopting the best features in all.

CRIMINAL PROCEDURE.

It is highly important that the method of requiring persons to answer to charges of the violation of the criminal law should be uniform throughout the State. To that end the committee suggests that the diversity in the rules for framing accusations, and bringing the defendant to trial in the city and county courts, be corrected.

The present law on the subject of the prisoner's statement is

an unnecessary exception to the rules of evidence, and should be so amended as either to exclude the accused from the witness stand, or put him upon the same footing with other witnesses, subject to cross-examination, prosecution for perjury, and his testimony should be received under the usual rules as to interest.

LAND TITLES.

While perhaps not strictly in the province of the committee, yet as germane to its duties, it is suggested that a committee be appointed by the Association to investigate and report upon the Torrens System of Registration of Land Titles.

ACT TO REGULATE CORPORATIONS.

Also germane to the subject, though not exclusively a matter of procedure, the Committee submits for consideration the following proposed legislation:

AN ACT

To regulate the administration of all corporations created by or existing under the laws of this State, to define their powers and duties, give rights to parties dealing with them, and for other purposes.

Section I. Be it enacted by the General Assembly of Georgia, and it is hereby enacted by authority of the same, That from and after the passage of this act all corporations created by or existing under the laws of this State shall :

(a) Hold all their corporate meetings of stockholders and directors, whether for the election of officers, authorizing the issue of bonds, mortgages, or deeds of trust, or for the transaction of other business affecting the welfare of the corporation, within the limits of the county in this State where the principal office of the corporation is located.

(b) Keep within the limits of the county of the principal office of the corporation its books showing the corporate trans-

tions, namely, Books of Minutes, Certificate of Charter, or other evidence of incorporation, Scrip Book, Stock Ledger, with the title deeds and other documents, or choses in action relating to the ownership and management of the property of the corporation. That all this corporate property shall be in the special charge and custody of an officer to be annually elected or appointed by the corporation, and such party to be a resident of the county in the State where the principal office of the corporation is located, and the corporation shall report annually to the ordinary of the county, the name of the officer to be kept on file in his office. That upon application to the ordinary, duly verified, such officer shall by him by order be required to furnish, under oath, to any stockholder, creditor or person interested therein information as to the capital stock, list of stockholders, amount paid in by the stockholders, corporate property, and general financial condition, as may be defined in the order of the ordinary, the same to be complied with under the penalty of contempt and imprisonment until obeyed.

Section II. Be it further enacted, that all deeds of trust or mortgages, or other conveyances made to trustees for the purpose of securing bonds or other obligations of the said corporation, or made to the creditors of such corporation, shall be made and executed in this State, and no person or corporation shall act as trustee under any mortgage or deed of trust so made unless said person is a resident of this State, or a corporation created by and existing under the laws of the State having authority for the administration of such a trust, and any appointment as trustee in violation hereof shall be *ipso facto* void as to the exercise of any authority whatsoever by him or it.

Section III. Be it further enacted by the authority aforesaid, that if any corporation shall violate any of the provisions of the foregoing sections of this bill, it shall be cause for revocation and forfeiture of its charter; and any person specially damaged or injured thereby may make application to the attorney-general of this State for leave to proceed in his name to enforce the

said forfeiture, which application the said attorney-general shall be authorized to sanction and permit if the same is found by him to be meritorious and done in good faith. That such person or persons so specially damaged shall also have their right of action against the officers and board of directors of the said corporation for their neglect or any refusal in the premises to comply with the provisions of the Act.

Section IV. Be it further enacted, That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed.

Respectfully submitted.

SYLVANUS MORRIS,
Chairman.

July, 1902.

ADDENDUM.

On receipt of the notice of my appointment as Chairman of the committee, I addressed a circular letter to the members asking for suggestions.

One member replied, sending me draft of an act of proposed legislation. Subsequently I drew up the report as herewith presented, and sent copies to the members of the committee for suggestions.

Hon. J. C. C. Black doubts whether section 5050 of the Code applies to equitable causes only; does not think appeal from one jury to another will have the desired effect; favors enlarging the right to amend in the interest of the defendant; does not favor the act as to corporations, thinks it goes too far.

Hon. M. A. O'Byrne does not concur in the suggestion as to the method of relieving the Supreme Court; does not favor the second section of the act as to corporations.

Hon. Frank H. Miller proposes to amend the statement on page 3, at the close of the subject of Remedial Procedure, so that it shall apply to equity causes only; suggests that the report be enlarged so that matters of satisfaction or avoidance (specially

pleaded as now required), not stricken on demurrer, shall be pleaded to by way of reply, not only in equity but at law.

Hon. William K. Miller, not a member of the committee, kindly calls my attention to the case of *Murphey v. Harker*, decided by the Supreme Court on April 1, 1902, 41 S. E. R. 585, as to the reply.

Hon. H. H. Perry doubts the advisability of appeals from one jury to another.

Respectfully submitted.

SYLVANUS MORRIS, Chairman.

July, 1902.

APPENDIX I.

THE JUDICIAL SYSTEM OF GEORGIA: ITS DEFECTS; WHAT CHANGES ARE NECESSARY TO BRING ABOUT A MORE HARMONIOUS AND ORDERLY SYSTEM AND TO RELIEVE THE SUPREME COURT.

PAPER BY
JUSTICE ANDREW J. COBB
OF THE SUPREME COURT OF GEORGIA.

While the subject selected for discussion involves the entire judicial system of the State, I shall confine myself to that part which relates to the Supreme Court.

Any alterations required to bring about a more harmonious and orderly judicial system necessarily involves the court of last resort, and while all of the amendments may not have for their primary object the relief of this court, any change which will bring about harmony and order will tend to that result.

The phraseology of the subject would indicate that it was no longer an open question that there was a necessity to relieve the Supreme Court. Are we justified in assuming that this is no longer an open question? Can we profitably devote ourselves to the discussion and determination of what changes should be made in the organization or jurisdiction of the court until the conditions are shown to be such that the people of Georgia can be brought to the conclusion that the interests of the public demand that the laws in reference to the court should undergo modification? The people will never be so satisfied until they see the bar of the State united in opinion on the subject. Opposition to any proposed amendment of the law by even a small

minority of the bar, composed of members of influence and ability, would probably result in a defeat of the measure.

It is therefore important that at the outset of a movement to bring about a change of the law for the purpose above indicated those who believe that such a change is wise or needful should be in a position to maintain successfully this contention.

It is perfectly natural that the judges of the court should be the first to apprehend that the mass of business before it is such as to seemingly interfere with a proper disposition of the cases in the time prescribed by law. While this fact may be ever so apparent to the judges, it must not be expected that the people, or even the bar, will be ready to accept as conclusive the mere opinion of the judges, unsupported by the facts upon which it is based. The unwillingness to accept and act upon such an opinion is not to be attributed to any want of confidence in those expressing it, but rather results from the fact that human experience has demonstrated that the most conscientious sometimes fail to see that their apparent interest in the public welfare has for its foundation a desire prompted primarily by personal considerations. The facts upon which the opinion is based should be submitted to the bar, and if the members of the bar upon these facts reach a similar conclusion, it is more than probable that upon a proper presentation of these same facts to the people or their representatives the necessity for relief will be recognized.

It is of course impossible to present in the limited time set apart for this discussion all the facts that could be collated for the purpose of showing that there is some change in the law needed to enable the Supreme Court to maintain completely and perfectly its usefulness and efficiency. Attention will now be called to some of them.

In 1890, 517 cases were returned to the two terms of the court; 399 were disposed of by judgments of affirmance or reversal; and 148, or about twenty-seven per cent., were withdrawn or dismissed.

In 1894, 723 cases were returned; 626 were disposed of by judgments of reversal or affirmance; and 97, or about thirteen per cent., were withdrawn or dismissed. The decreased percentage of withdrawals and dismissals during this year is, to some extent, to be accounted for by the passage of the acts of 1892 and 1893 (Civil Code, §§5536, 5569), regulating the practice in the Supreme Court.

In 1897, which was the first year after the number of justices was increased to six, 876 cases were returned; 755 were disposed of by judgments of affirmance or reversal; and 121, or about fourteen per cent., were withdrawn or dismissed.

In 1901, 991 cases were returned; 898 were disposed of by judgments of affirmance or reversal; and 93, or a little less than ten per cent., were withdrawn or dismissed. 590 cases were returned to the October term, 1901, and on June 16, 393 cases had been returned to the March term, 1902. Before the present term is closed the aggregate number of cases returned to the two terms will exceed 1,000. Of the 983 cases which are already on the dockets, 66, or a little less than seven per cent., have been withdrawn or dismissed. Of those remaining, in 136 the record is silent as to the amount involved; 324 involve over \$500; 52 involve between \$250 and \$500; 88 involve between \$100 and \$250; 54 involve between \$50 and \$100; 52 involve \$50 or less, and of this last number twenty are cases against railroad companies for killing cattle, in which the railroad company is plaintiff in error. 201 are criminal cases, and of this number 83 are cases involving offenses below the grade of felony. On June 16 there were on the dockets undisposed of 179 cases, and there will probably be returned to the present term about twenty more cases, which will make the number necessary to be decided before the term closes about 200. It is hardly probable that the work of the present term will be completed before August 15.

The following shows by terms the number of cases in which opinions were filed as well as those in which head-notes only

were written, from the March term, 1893, to and including the March term, 1901; a period of eight and one-half years, or seventeen terms.

	Opinion Cases.	Head-note Cases.
March term, 1893.....	167.....	142
October term, 1893.....	101.....	80
March term, 1894.....	147.....	253
October term, 1894.....	117.....	92
March term, 1895.....	228.....	180
October term, 1895.....	128.....	83
March term, 1896.....	201.....	237
October term, 1896 } to Jan. 1, 1897 }	57.....	86

(The foregoing terms are reported in the Georgia Reports, beginning with 91 Ga., p. 333, and ending in the 100 Ga., p. 105.)

	Opinion Cases.	Head-note Cases.
Jan. 1, '97, to March term, '97..	39.....	11
March term, 1897.....	376.....	131
October term, 1897..	167.....	92
March term, 1898.....	339.....	123
October term, 1898.....	209.....	52
March term, 1899.....	272.....	153
October term, 1899.....	229.....	179
March term, 1900.....	271.....	183
October term, 1900.....	219.....	152
March term, 1901.....	263.....	143

(The cases decided from January 1, 1897, to the October term, 1901, will be found reported in the Georgia reports, beginning with 100 Ga., p. 105, and ending with the 113 Ga.)

On January 1, 1897, the court was reorganized under the constitutional amendment of 1896, increasing the number of justices from three to six.

During the period beginning with the March term, 1893, and ending December 31, 1896, a little less than four years, 2299 cases were decided, 1146 opinions were filed, and in 1153 cases head-notes only were written.

During the first two months' existence of the reorganized court, from January 1, 1897, to the March term, 1897, 50 cases were decided and 39 opinions written.

From the beginning of the March term, 1897, to the end of the October term, 1900, exactly four years, 3147 cases were decided, 2082 opinions were filed, and 1065 cases were decided on head-notes.

In the latest published Georgia Report (113), which contains all the cases decided during the March term, 1901, there are 263 opinions and 143 head-note cases.

It is apparent that the number of cases required to be decided is each year steadily increasing; this increase resulting from two causes, the total number of cases returned becoming greater and the number withdrawn or dismissed less.

During the four years immediately preceding the reorganization of the court opinions were filed in less than fifty per cent. of the cases decided, and at the March term, 1894, opinions were filed in less than thirty-seven per cent.

During the four years immediately following the reorganization of the court opinions were filed in more than sixty-six per cent. of the cases decided, and at no term were the cases in which opinions were filed less than fifty-seven per cent.

From 1897 to 1901 the court has each year been in session continuously from the first Monday in October until the latter part of July, and in several years an adjournment was not had until nearly the middle of August. The working hours of the court for hearing argument and consultation have been, since October, 1897, from 9 A.M. to 1 P.M. and from 3 P.M. to 5 P.M. in the fall and winter, and 6 P.M. in the spring and summer. These hours, however, do not represent all the working hours of the justices. The individual justice, when engaged in

the preparation of opinions, does not confine himself to these hours, and at this time, as well as when engaged in consultation, often finds it necessary to extend his hours of work beyond those above named. These hours of work are very different from those of the King's Court in England, at least at one time in English history. "You are to know," said Fortescue, the chancellor of Henry VI., "that the judges of England do not sit in the King's Court above three hours in the day, that is, from eight in the morning till eleven. The courts are not open in the afternoon. . . . The judges, when they have taken their refreshments, spend the rest of the day in the study of the laws, reading of the Holy Scriptures, and innocent amusements at their pleasure. It seems rather a life of contemplation than of much action. Their time is spent in this manner free from care and worldly avocations."

From October, 1898, until February, 1900, all the justices presided in every case. The accumulation of business compelled the court to abandon this plan and hear arguments in division. Under this system the division which hears the argument, or to which the case is submitted, examines the record and agrees upon a tentative decision, and the justice to whom the case has been assigned makes another examination of the record and writes an opinion, which is read to all the justices. If the division which has determined the case is satisfied that the opinion submitted properly deals with the case as shown by the record, and all the justices agree that the law of the case is correctly set forth, the opinion is filed. If the opinion is not satisfactory to all the justices present, the case is re-examined by them. It is not uncommon for this examination to result in another opinion being prepared, or the one first submitted being substantially changed. It is and has been the earnest purpose of all the justices to avoid, as far as possible, decisions by a divided court; and when such a result seems probable, cases are often re-examined by all the justices again and again. When, however, a decision by a divided court is inevitable, one of the justices writes an opinion

expressing the views of the majority, and the dissenting justices, if there is more than one, agree which one shall express their views.

The record in each case is closely examined twice. First, by the justices of the division hearing the case, which is always never less than two and generally three; and, second, by the justice who is to write the opinion. If there is any difference among the justices of the division hearing the case, the record is again examined by all the justices present for general consultation.

For many years it has been impossible to hear oral argument in all the cases returned to the October term before the expiration of that term; but until 1901 all of such cases were heard orally during the March term, if counsel desired to be so heard. In 1901 the court felt constrained to withdraw this privilege. In 1902 the court felt compelled to again withdraw this privilege, and in addition to this counsel in cases returned to the March term were requested, so far as they could consistently do so, to submit their cases on briefs. The facts which were thought sufficient to justify this request were set forth in the preamble to the order of March 19, 1902, and were in substance as follows: There were 160 cases of the October term, 1901, yet to be disposed of. The number of cases then on the dockets of the March term, 1902, was 292, which, added to the number of additional cases which would probably reach the court during the March term, made an aggregate of 545 cases to be disposed of between March 19 and the date of adjournment in the summer. Attention was called to the fact that the court reviews by direct bill of exceptions the judgments of 137 superior courts and about 40 city courts.

The highest evidence that the bar thoroughly appreciated the conditions that surrounded the court was that out of 297 cases 256 were submitted on briefs, and in nearly all of the forty-one cases in which oral argument was not waived the counsel interested therein had waived the privilege in other cases, but felt

constrained to insist upon it in some one or more of their cases, on account of the peculiar character of the questions involved.

The generous response of the bar to the request of the court in the order above referred to demonstrates the cheerful willingness of the bar to respond to all proper appeals by the bench where the usefulness of the court is involved.

The right of counsel to be heard orally is an important right and one highly regarded, and justly so, by all counsel who have cases of importance and understand their cases; and a court can ill afford to dispense with oral argument by counsel thoroughly prepared to present a case. I refer to the right of counsel to be heard orally, and I use the word *right* advisedly. If it can not be demonstrated that this right is guaranteed in the constitution, it can certainly be shown that there is, and has always been since the establishment of the Supreme Court, a right under the statutes of the State to be heard orally in all cases that can be so heard during the term to which the cases are returnable. After the term has expired, however, the right to an oral argument is gone.

It is more than desirable that the business of the court should be such, not only that oral argument may be had in all cases, but also that every case shall be heard by a full bench of six justices, and the record in each case examined in a consultation in which all of the justices participate. The court will never be able to attain its full usefulness until this can be done.

Not only will a state of affairs authorizing this never arise under existing conditions, but, on the other hand, in a few years a portion of the cases of the October term will be heard orally during that term and the remainder go over to the March term. The greater part of the March term will necessarily be consumed in deciding these cases, and at the end of the March term a portion—probably a small portion—of the cases returnable to that term will be heard orally and the remainder go over to the October term for decision. The court will be compelled, as it was prior to 1897, to dispose of cases involving intricate

legal questions by a bare written synopsis of the points decided.

Some cases can be properly disposed of by head-notes. When the case is controlled by well-settled legal principles, or where the evidence is conflicting, and the case is one where the discretion of the trial judge is controlling, it is a waste of time and energy to write an opinion, and all such cases are properly head-note or memoranda cases.

It is to be greatly deplored, however, whenever a court of last resort finds itself confronted with a status where it is compelled to announce its judgment in a case involving novel, intricate or unsettled legal questions in a dogmatic statement, unsupported by reasoning, either original or the result of research. No court, no matter what may be the learning and ability of its constituent members, can long maintain its reputation under such circumstances.

If the court were to adopt the plan of deciding the cases exclusively on head-notes, even then the time would come when all the cases could not be disposed of by the end of the second term, and such as were not decided by that time would have to be stricken from the docket, standing affirmed by operation of law.

If the opinion is entertained by some that the usefulness of the court and the interests of the public demand that some measures should be taken to relieve the Supreme Court, of at least a portion of the business now allowed to come before it, can it be said, in the face of the facts above stated, that this conclusion is altogether unfounded? Are the members of the bar satisfied that some system of relief should be adopted?

If the bar is so satisfied, the next question is of what shall that relief consist?

Numerous suggestions have been made. The number of such suggestions is but evidence of the thoughtful consideration that the subject is receiving. Let reference be briefly made to some of them.

An increase in the number of justices and a consequent increase in the number of divisions of the court has been suggested. Some favor an intermediate appellate court, from which a writ of error to the Supreme Court will lie only in certain cases. Among those who favor this plan there is a difference of opinion as to whether the judges of this court shall be appointed as such, or whether the court shall be presided over by judges of the superior and city courts, and also whether there should be only one of such courts or several sitting in different portions of the State. It has been said that there should be no writ of error to the Supreme Court in misdemeanor cases nor in felony cases where the jury may by recommendation reduce the punishment to a misdemeanor penalty, nor in cases from city courts where less than \$500 is involved, nor in cases originating in the justice's court, nor in cases originating in the court of ordinary where less than \$500 is involved.

Limiting the jurisdiction of the court by providing that no case involving less than a given amount, no matter where originating, shall go to that court unless it involves given questions, is a plan advocated by some.

Permitting oral argument only in cases involving more than \$500 is another suggestion.

Restricting the jurisdiction of the Supreme Court to cases of a certain class, depending upon the character of the questions involved, has also been suggested.

It has also been said that relief to some extent might be had by abolishing the pauper oath as a substitute for payment of costs and requiring counsel for plaintiff in error in each case to certify that the case is not carried up for delay only, and that he believes the assignments of error are meritorious.

Another suggestion is that the law be so changed that in no case where a verdict has been approved by the trial judge shall the question of the sufficiency of the evidence to support the verdict be afterwards inquired into.

Many other suggestions have been made, and others will probably be made during this discussion.

It is not my purpose at this time to advocate any particular line of relief, or to express approval or disapproval of any of the suggestions above referred to or any others that have been or may be made.

The moment the General Assembly or the people, as the case may be, are satisfied that relief is needed, the inquiry will at once be made, What is the character of the relief needed? This question will be addressed to the members of the bar, and an answer from them will be expected.

It will be a waste of time to go before the General Assembly advocating either a statute or a constitutional amendment until the bar of the State are practically united in favor of some plan. The various plans suggested and that will be suggested show a difference of opinion among the members of the bar. No one, it is to be presumed, is wedded to any particular plan.

All plans should be carefully considered and the best selected, if there be such, or one devised by combining two or more, or a new plan evolved from all the suggestions. The bar of the State must go to the General Assembly with no differences of opinion as to the necessity for relief or of the general character of the relief.

How are the bar to be brought together on this subject? Let a committee be appointed small enough to insure active work, but at the same time large enough to be representative of the entire bar of the State, not only territorially but also as to all classes of litigation in the courts of the State. Let this committee, after having requested through the public prints suggestions from all members of the bar, as soon as practicable after the adjournment of the association meet and agree upon a plan and draft a bill to carry the same into effect. Have a printed copy of this bill mailed to every lawyer in Georgia, with a request from the committee that he carefully read the same and forward to the committee by a day stated any suggestions that

may occur to him that would tend to perfect the plan or bring about the desired result. After the expiration of the time given for replies, let the committee meet and consider carefully all the suggestions made, and in the light of the same make a final draft of the bill. After a copy of this final draft has been published, let the committee see to its introduction in the next General Assembly, requesting the privilege to appear before the proper committees in advocacy of its passage.

This committee should be composed exclusively of active practitioners of the law. While the judges might with propriety be called upon for suggestions, and what they say will, no doubt, be considered, the final decision as to what is the proper measure should be a conclusion of the bar, the direct representatives of those whose rights are to be passed upon by the court. The appeal to the General Assembly, and, if need be, to the people, should not be subject to the criticism that it is merely a scheme of the judges to be relieved of labor, in order that they may live at the public expense with less exertion and greater comfort. Let it be made manifest that it is an appeal from the bar in behalf of all who are interested in the enforcement of law and its due administration, to make more perfect and to render more efficient the instrumentalities through which justice is judicially administered.

No public officer has a right to expect or demand ease or comfort while in the discharge of official duty, but the public are interested in not requiring more of an officer than a faithful, diligent and intelligent person holding such a position may be reasonably expected to perform. The bar and the people are more vitally interested in the question under discussion than the individuals who may, for the time being, be the justices. The individuals die or retire and others take their places, but the court overburdened with business still remains, and a court in such a condition, no matter what may be the character, the habits of industry or learning of its members, can never accomplish the

best results, either as to the decision of the particular controversy, or as to the promulgation of the rule for future conduct.

The united appeal of the Georgia Bar, composed as it is of men of character, ability and learning, in behalf of any measure of law reform will not go unheeded, whether it be to the General Assembly or to the people.

APPENDIX J.

A PROPOSED ACT ESTABLISHING DISTRICT COURTS OF APPEALS.

PREPARED BY
JUDGE POPE BARROW
OF SAVANNAH.

A BILL

TO BE ENTITLED AN ACT TO ESTABLISH THREE JUDICIAL DISTRICTS
IN THIS STATE, AND DISTRICT COURTS OF APPEALS THEREIN; TO
DEFINE AND REGULATE THE JURISDICTION OF THE SAME, AND OF
OTHER COURTS OF THIS STATE IN CERTAIN CASES, AND FOR OTHER
PURPOSES.

Section 1. Be it enacted by the General Assembly of the State
of Georgia, That three judicial districts be, and the same are, here-
by created in this State.

The First District shall be composed of the counties comprising
the Eastern, the Atlantic, the Brunswick, the Southern, the Albany,
the Middle, the Pataula, and the Southwestern circuits.

The Second District shall be composed of the counties comprising
the Augusta, the Northern, the Ocmulgee, the Oconee, the Macon,
the Chattahoochee and the Flint circuits.

The Third District shall be composed of the counties comprising
the Western, the Northeastern, the Blue Ridge, the Stone Mountain,
the Atlanta, the Cherokee, the Rome, the Tallapoosa and the Cow-
eta circuits.

Sec. 2. Be it further enacted by the authority aforesaid, That a
District Court of Appeals be, and the same is, hereby created in
each of said districts, which shall consist of three judges, of whom
two shall constitute a quorum, and which shall be a court of record,

with appellate jurisdiction, as is hereinafter limited and established. The judges of the superior courts and the constitutional city courts in each of said districts shall constitute the judges of the District Court of Appeals therein, and three of the same shall be assigned to hold said courts by such rule and in such order as may be determined by the judges of that district, as hereinafter provided; but in case of a failure of one to attend, two shall constitute a quorum, with full power and authority of the court. The judge of the superior court oldest in commission of those present at any term shall be the presiding judge. No judge shall sit in the District Court of Appeals in any case tried before him in the court below.

Sec. 3. Be it further enacted by the authority aforesaid, That one term of said District Court of Appeals for the First District shall be held in each year in each of the cities of Savannah, Brunswick, Thomasville and Albany. That one term of said District Court of Appeals for the Second District shall be held in each year in each of the cities of Augusta, Macon, Columbus and Griffin. That one term of said District Court of Appeals for the Third District shall be held each year in each of the cities of Athens, Atlanta, Rome and Newnan.

Sec. 4. Be it further enacted by the authority aforesaid, That within ten days after the passage of this Act, it shall be the duty of the Governor to call a convention of the judges of the superior and city courts of this State, at the State house at Atlanta, at such time within thirty days after the passage of this Act as he may designate, and said convention shall make rules of practice in said court, prescribe the form and style of its seals, and the form of writs, and the other processes and procedures as may be conformable to the exercise of such jurisdiction, as shall be conferred upon it by law. The judges from each district in this convention shall fix the dates of the terms of said District Court of Appeals in their respective districts at the places hereinbefore referred to, and report the same to the convention, by whom it shall be confirmed and entered upon its minutes; and the terms thus fixed shall be the lawful regular terms of said courts until changed by law, and shall designate the

three judges who shall hold the first term of said court, after which the court itself shall, before the adjournment of each term, designate three judges who shall hold the next term at the place which shall come next in order according to the regulations of the judges as aforesaid. The minutes of the proceedings of the convention of judges shall be signed by the presiding judge, and upon the adjournment shall be filed in the office of the Secretary of State.

Sec. 5. Be it further enacted by the authority aforesaid, That the clerk of said District Court of Appeals in each district shall be elected by the judges of the superior and city courts thereof, and the person receiving the highest number of votes shall be the clerk. The first election shall be held at the time of the convention of the judges hereinbefore provided for. Subsequent elections shall be held by a convention of the judges of the said superior and city courts of each district, to be held in their districts upon the call of the judge of the superior court oldest in commission at the time therein, at such time and place in said district as he may fix; *provided*, that the same shall be held not less than thirty days before the expiration of the current term. In case of a vacancy, the judges presiding at any term shall have power to fill said vacancy until a special convention of the judges of the superior and city courts can be called by the superior court judge who is oldest in commission in said district. In case of a vacancy it shall be his duty to call a convention of said judges at such time and place, within thirty days after the vacancy shall have happened, as he may designate. The regular term of said clerk shall be six years. He shall give a bond for the faithful discharge of his duties, in such sum as may be required by the rules of the general convention of judges hereinbefore provided for. The sheriff of the superior court of the county in which each of the cities herein named is situated shall be *ex officio* the sheriff of said District Court of Appeals, and it shall be his duty to attend the session of said court, and he shall have power to appoint such deputies and bailiffs as may be provided for by the rules of the judges established for said court.

Sec. 6. Be it further enacted by the authority aforesaid, That the said District Courts of Appeals established by this Act shall

have and exercise appellate jurisdiction to review, by appeal, all final decisions in the superior courts and in the city courts within their respective districts: granting or refusing a new trial; granting or refusing an application for an injunction or a receiver; dissolving or refusing to dissolve an injunction; or discharging or refusing to discharge a receiver; in all cases of *certiorari*; all appeals from justice's courts; and all misdemeanors.

Sec. 7. Be it further enacted by the authority aforesaid, That whenever any party in any case in the superior or city courts, jurisdiction of which by appeal is conferred upon the District Court of Appeals, shall desire to appeal to said court, it shall only be necessary for his counsel to state in writing within ten days after the decision or judgment complained of was rendered, whether in term or vacation, that he desires an appeal to the District Court of Appeals, stating the term to which it is returnable, and present it to the judge of said court, and file it with the clerk; whereupon it shall be the duty of said judge to order the clerk to transmit all the papers in the case to the next term of the District Court of Appeals for that district, which shall be held next after the expiration of twenty days from the date when said application for an appeal is filed in the clerk's office of said superior or city court, or to the next term succeeding that one, if the place is nearer or more convenient, at the option of the appellant. Within five days after such order is signed, the opposite party, or his attorney, shall be served with a copy of the petition for appeal and order of the judge. All cases in the District Court of Appeals shall be heard and determined upon the original papers, and a brief of the testimony adduced upon the trial in said superior or city court, approved by the judge who tried the case. When the decision complained of in said superior court or city court is the granting or refusing of a motion for a new trial, the brief of testimony used on the hearing of said motion shall be sent up without any other or further testimony or brief thereof. In all other cases the appellant shall be allowed to file, and present for approval, his brief of the evidence at any time prior to the first day of the term of the District Court of Appeals to which the appeal is returnable.

Sec. 8. Be it further enacted by the authority aforesaid, That no writ of error shall lie to the Supreme Court of this State from the superior courts or city courts thereof, in any case, jurisdiction of which is conferred upon the District Court of Appeals, but any party shall be entitled to an appeal to the Supreme Court from the decision of the District Court of Appeals, as provided in this Act, in the cases hereinafter mentioned. The right of exception *pendente lite* is not affected by anything herein contained, but when any case in which such exceptions are filed shall be appealed to the District Court of Appeals, they shall be subject to review therein, and if such case shall be appealed to the Supreme Court from the District Court of Appeals, error may be assigned upon the ruling and decision of the District Court of Appeals upon such exception. In cases in which a new trial is granted by the District Court of Appeals, but any other ruling or decision is also made affecting the rights of any party, exceptions to such other ruling or decision may be filed in said District Court of Appeals *pendente lite* within twenty days, and if said case should at any time thereafter be appealed to the Supreme Court, error may be assigned upon said exceptions.

Sec. 9. Be it further enacted by the authority aforesaid, That an appeal shall lie from the decision of the District Court of Appeals to the Supreme Court of this State, in all cases of refusal of a new trial by the District Court of Appeals. Such appeals to the Supreme Court may be allowed during the term, or in vacation, by any judge who took part in the decision, within ten days after the decision is made. The application need only state the case and pray that an appeal be allowed. Within five days after an appeal is allowed, the appellant shall present an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged, and shall specify such parts of the record as are deemed necessary for the elucidation of the errors assigned. If the recitals of fact in the said assignment of error are true, the judge who allowed the appeal shall approve the same, and order the clerk to send up such parts of the record as are therein specified, and such other parts as said judge may consider necessary to elucidate the errors

assigned. All such assignments of error and specifications of record shall be served upon the opposite party, or his counsel, and filed within five days after the same are approved. The appellee may, at any time within five days after the assignment of errors and specification of record are filed, apply to any judge who took part in the decision, and specify additional parts of the record, and said judge shall order the clerk to send up such parts as are thus specified. Both parties may appeal and assign error, and in such cases, only one copy of any part of the record need be sent up. If the judge should decide that the recitals of fact in the assignment of errors are true only in part, he shall, in his order of approval, designate such parts as are true, and they only shall be considered in the Supreme Court. The clerk shall transmit to the Supreme Court a certified copy of the assignment of errors and specifications of record, and order and approval, together with a certified copy of such parts of the record as are specified within fifteen days after the assignment of errors and specifications are filed in his office. In all cases finally determined in the District Court of Appeals, a mandate, or other proper process in the nature of a *procedendo*, shall be issued on the order of the District Court of Appeals to the court below, for the purpose of informing such court of the proceedings and judgment in the District Court of Appeals, so that further proceedings may be had in such lower court as to law and justice may appertain.

Sec. 10. Be it further enacted by the authority aforesaid, That in cases of appeals to or from the District Court of Appeals, where a *supersedeas* is desired by the appellant, the costs must be paid, and a bond taken in the court from which the appeal is taken, with good and sufficient security that the appellant shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal. But in all suits where the property in controversy necessarily follows the suit, as in real actions and trover, and in suits on mortgages, or where the

property is in the custody of the sheriff, or where the proceeds thereof, or a bond for the value thereof, is in the custody of the court, indemnity in all such cases will be required only in an amount sufficient to secure the sum recovered for the use and detention of the property, the costs of the suit, just damages for delay, and costs and interest on the appeal. Judgment may be entered upon the said bonds as under existing laws. If the appellant shall file an affidavit that he is unable, from poverty, to pay the costs or give the bond, and that his counsel has advised him that he has good cause for an appeal, this shall operate as a *supersedeas*.

Sec. 11. Be it further enacted by the authority aforesaid, In case only one judge shall appear at the time and place for holding any term of the District Court of Appeals, he may adjourn the court to any day prior to the opening of the next term of the District Court of Appeals for that district; and if on said last mentioned day two judges shall not be in attendance, the court shall stand adjourned until the next regular term, wherever that may be, and the clerk shall carry all the cases to such place and term, and such cases shall be then and there in order to be heard and determined before the cases returnable to that term. In case no judge shall appear at the time and place for holding any term, the clerk shall adjourn the court from day to day, not exceeding two adjournments, and shall put an order upon the minutes to this effect. If, at the end of said two adjournments, no judge shall have appeared, the court shall stand adjourned until the next regular term, wherever that may be, and the clerk shall carry all the cases to such place and term, and such cases shall be then and there in order to be heard and determined before the cases returnable to that term.

Sec. 12. Be it further enacted by the authority aforesaid, That said District Court of Appeals shall have power, either in affirming or reversing a judgment, to so mould and frame its judgment as to give equitable relief in the case, and do substantial justice between the parties in accordance with the principles of law. In all cases resting in the discretion of the judge below, it shall be the duty of the judges in said District Court of Appeals to review that discre-

tion and exercise their own. No continuance shall be granted in said District Court of Appeals, except for providential cause.

Sec. 13. Be it further enacted by the authority aforesaid, That the clerk of said court shall be entitled to two dollars for each case which shall be docketed in said court, which shall be taxed in the bill of costs. And the sheriff shall in like manner be entitled to one dollar in each case which shall be so docketed. The additional costs allowed the clerk shall be the same as those allowed by law to the clerks of the superior courts for like services. There shall also be taxed in the bill of costs in each case in said court the sum of four dollars, which shall be collected and remitted by the clerk to the Treasurer of this State, to be covered into the public treasury. This four dollars shall be paid in each case to the clerk by counsel for the appellant before the case is argued in said District Court of Appeals, and the counsel for the appellant, as well as his client, shall be liable for said four dollars. It shall be in the power of said District Court of Appeals to cast the costs upon either or both parties in any case, whether the judgment below be affirmed or reversed.

Sec. 14. Be it further enacted by the authority aforesaid, That each judge attending and sitting in said District Court of Appeals shall be paid three cents per mile, by the nearest practicable route from his home to the place where the term is held, and the same returning, and shall also be paid the sum of five dollars per day for each day court is in session and he is sitting. These sums shall be paid at the end of each term from the treasury of this State upon the warrant of the Governor, which shall be issued upon receipt of the certificate of the presiding judge at any term of said District Court of Appeals, under the seal of said court.

Sec. 15. Be it further enacted by the authority aforesaid, That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed.

APPENDIX K.

THE JUDICIAL SYSTEM OF GEORGIA; ITS DEFECTS; WHAT CHANGES ARE NECESSARY TO BRING ABOUT A MORE HARMONIOUS AND ORDERLY SYSTEM, AND TO RELIEVE THE SUPREME COURT.

PAPER BY
WILLIAM K. MILLER
OF THE AUGUSTA BAR.

Mr. Chairman and Gentlemen:

This Association and the public generally are under an obligation to the Committee on Judicial Administration and Remedial Procedure for its report to this Association of last year. It marks, I believe, the beginning of an agitation in regard to the courts of Georgia which will end in a decided advance in the administration of public justice, and will tend to elevate our courts more and more in the respect and confidence of the people.

The conditions confronting the committee were such that they felt justified in reporting that the courts in Georgia were "without form and void"—were mere "patchwork palaces"—"and without that mutual relation" "that should characterize the courts of a great State." And further, that the unlimited right and repeated appeals permitted in small cases was a waste of judicial machinery, and they accordingly suggested as a remedy, where no constitutional question was involved, a limitation on this power of appeal in civil cases under \$500, so that no case could have but one appellate trial.

Under the action of the Association this report is now the subject of general discussion. In some particulars I am in entire accord therewith, principally as to what is said as to criminal mat-

ters, and that no case should have as a right more than one appellate trial. In other respects I think the report of the committee could be supplemented. Viewing the subject-matter, it naturally divides itself into a consideration of our courts, and of appeals therein in small cases.

First. As to these appeals. The evil to be corrected does not lie so much in the right of appeal, as it does in its excessive exercise—an exercise growing largely out of a want of confidence in the judgment of the lower court. For example, the losing party in a litigated case in a justice court is generally dissatisfied with the decision, and almost always appeals. The pauper affidavit is a convenient plan—even if it does not at times offer an inducement to appeal, for no other reason than to delay the opposite party.

This method of appeal, from both the superior and justice courts, is not sufficiently guarded. True, the losing party in a justice court has to make oath that he does not appeal simply for the purpose of delay, and that he is advised he has good cause for appeal, but he does not have to state by whom he is so advised. Any such appeal should at least be accompanied by the *certificate* of the attorney at law of the losing party, showing upon what ground the appellant was advised he had good cause for appeal. Such appeals should only become operative when sanctioned by the judge of the court to which the appeal is taken. For example, when the appeal *in forma pauperis* is to the superior court, it should not become operative until allowed or sanctioned—as in *certiorari* cases—by a judge of the superior court. A similar appeal or exception to the Supreme Court from the superior court should not be allowed until it receives the approval of the judge of the superior court, or a judge of the Supreme Court.

A REMEDY.

Irrespective of how guarded appeals may be, still one of the *great evils to be remedied* lies in the system giving civil jurisdiction to the justices of the peace. If this jurisdiction were taken away and given to a properly organized county court—such as shall be hereinafter suggested,—I believe that a great advance in the administration of justice would be secured. Certainly the excessive

number of appeals from justice courts would come to an end, and our Supreme tribunal would be relieved accordingly. It is hard to improve upon the common law—the common sense and experience of the Anglo-Saxon race,—and I feel that we have not improved upon it by extending civil jurisdiction to justices of the peace. He was, in times past—what his name implies—an officer to keep the peace. It was an honorable office, and generally held by the foremost man of the shire or county in England. A justice could issue warrants for arrest, etc., but when it came to holding court and trying cases, at least two of the justices were required to be present. For example, among the courts of England directed to be held in each county was the Court of General Quarter Sessions and Appeals. It was held four times a year, and by two or more justices of the peace, one of whom had to be of the *quorum*—that is, noted for his learning and ability. Their jurisdiction extended to the trying of felonies and trespasses. 4 Blackstone's Commentaries, Wendell's edition, page 271, and 13 American & English Encyclopedia of Law, page 10.

If we still retain justice courts and their civil jurisdiction, our system would be much improved if these courts were required to be held by two or more justices, and the concurrence of at least two of the justices as necessary to any decision that might be rendered—with an appeal on questions of law only,—unless the justices could not agree, when the whole case might be appealed to the superior court. If a judgment had to be rendered by two justices of the peace—salaried officers of the county, and not paid by the fees of the litigant,—justice would be more impartially administered. There would be fewer appeals, as the public would have more confidence in the court. When appeals were taken they should be heard without unnecessary delay, but this can never be accomplished so long as the law remains as at present, with appeals returnable to a term of the superior court six months off.

It is still a reproach to the great State of Georgia that its laws are in such a condition that no court can render a judgment upon a promissory note for \$1,000.00 in any county of the State where no city court exists, under six months and twenty days; and this,

when the defendant admits he has no defense. No excuse can be offered to the lay mind for such impotency. This calls for some remedy, and possibly it is included in the suggestion of the committee, that our courts are "without form and void."

Even as far back as the time of Lord Chancellor Burnell, A.D. 1282, when the statutes *de mercatoribus* and Acton Burnell were passed, if the debt was acknowledged before the mayor of the town, upon default in the payment, execution issued immediately, and upon application to the chancellor the goods and chattels, lands and tenements of the defendant would be seized and sold on execution.—Campbell's Lives of the Lord Chancellors, vol. 1, p. 163. Yet, now we have to wait six months and twenty days to get a judgment, and then another month to advertise and sell the property, if any can be found after all this delay.

Second. The courts generally.—Considering the condition of the courts themselves, and their mutual relation to and with each other, are they "without form and void," as reported by the committee? I do not think so. The Constitution, article 6, section 1, Code 5831, provides that "The judicial power of this State shall be vested in a Supreme Court, superior courts, courts of ordinary, justices of the peace, commissioned notaries public, and such other courts as have been, or may be, established by law." Our Supreme Court has said, that "A court is composed of a judge or judges, and subordinate officers. Courts of law usually have a jury to decide questions of fact. It is not necessary, however, that to be a constitutional court, a jury should be provided to determine the facts." *Dunagan v. Stradler*, 101 Ga. 478, citing 72 Ga. 812; 73 Ga. 377.

Under the Constitution we have a Supreme Court for the correction of errors, a superior court of original and unlimited jurisdiction in each county, from which appeals lie in all cases to the Supreme Court, and sundry inferior courts, from whose judgments appeals lie to the superior court and on to the Supreme Court. They have certain relations to and with each other. The Supreme Court can direct the judgment to be rendered by the superior court, and this court has in turn a general supervisory jurisdiction over inferior courts, and can direct the judgment of these courts in sun-

dry cases. Truly, a judicial coterie, which has worked harmoniously. While great improvements could be made in our system, yet it will bear comparison with those of the majority of the States of the Union. The Constitution of the United States, in defining the Judicial Department, provides that it "shall be vested in one Supreme Court and such inferior courts as the Congress may from time to time make and establish." We are all familiar with the scheme of these courts, thus pointed out by the Constitution, and established by Congress, and this scheme has been largely followed by all the States of the Union, and by the State of Georgia.

If our whole judicial system is "a patchwork palace," that requires extensive overhauling, the first thing to be considered is, what kind of a judicial palace shall we construct. Shall it be one that is based on the State or the county as a unit? Shall we follow what I might call the modern English or the American system?

For a thousand years, or more, prior to 1875, there were a great many courts in England exercising concurrent and conflicting jurisdiction. It was at times a very serious question as to when and where the jurisdiction of one commenced or another ended. Accordingly, the English people, in 1875, determined that, instead of having so many courts, they would have only one. Thereupon a statute was passed declaring that all existing courts should constitute *a single tribunal*, known as the Supreme Court of Judicature. This court was divided into two divisions, one Her Majesty's High Court of Justice, and the other Her Majesty's Court of Appeals. The former exercised original jurisdiction, the latter appellate power. The High Court consisted of twenty-one judges—equity judges, common law judges, and judges of probate, divorce, and admiralty. The Court of Appeals consisted of fourteen judges, some of whom were members also of the High Court. This High Court was subdivided into five divisions, corresponding to the previously existing courts of Common Law and Equity. One division was termed the Chancery Division, and was presided over by equity judges. Another was Queen's Bench Division, the Common Pleas Division, the Exchequer Division, the Probate, Divorce, and Admiralty Division. Judges could be transferred from one division

to another. The Act provided that in every civil case law and equity should be concurrently administered, and that equitable rules *should supersede* those of the law whenever there was any conflict between them. Causes could be heard by a single judge. All appeals were heard within the court itself, either by the whole or a divisional court, consisting of not less than three judges. Provision was also made for holding circuit courts throughout the kingdom, as occasion might require. See Chase's Blackstone Bank's ed. 651, n.

The foregoing is a mere outline of the English system of courts, under the Act of 1875, such as I have been able to gather from the limited sources of information at hand. It proceeds upon the theory of one court for the entire kingdom, with subdivisions thereof for different places and character of cases. The State here is the basis and not the county, while with us the county has always been the basis upon which the court of original jurisdiction rested. Suppose some such plan were applied to the State of Georgia. The first thing we would encounter would be a saving in the cost of maintaining our courts, and a consequent lessening of taxation. A superior court in each county is a great expense. With a competent county court, as hereinafter indicated, to determine many of the local matters that would arise from time to time, why should not three or four agricultural counties be grouped together so as to form a district wherein a superior court should sit with original jurisdiction over them all. The expense of attending witnesses could be obviated by submitting causes to referees to find and report the facts.

Further, with a county court in each county, all the superior courts in Georgia could be amalgamated into one superior court, divisions of which could sit at the principal cities and towns of the State, with judges rotating as assigned by the chief justice of the Supreme Court. By such a plan, now that judges are elected by the people, all local influences would be removed. The occupant of the bench would be entirely impersonal. He would be truly a judge to administer the law. Many appeals could be heard by three judges of the circuit bench. They should settle appeals on all ques-

tions of fact, so that the Supreme Court should hear only questions of law. It would be well to carefully consider this plan, and see if we cannot apply some of its good points to our present system.

The eight suggestions of the committee as to civil matters do not tend to improve upon the form of our courts, but rather seek to limit the right of appeal. If these suggestions of the committee should become law, the effect would be :

1. To relieve the Supreme Court from many unnecessary appeals in cases under \$500.

2. To increase somewhat the labors of the superior court judges. These would not be as largely increased as might be imagined, because as matters now stand, the superior court judges have to decide these cases before they can go to the Supreme Court. Their position, however, would be changed in many instances, from that of a *nisi prius* judge to that of a reviewing judge, the latter requiring more study and reflection than the former.

3. To increase the already overcrowded dockets of the city courts with appeals from justice courts, for only in the country counties where there are no city courts could appeals be taken to the superior courts. City courts, with several terms a year, are the outgrowth of the protest against the long intervals between the sittings of the superior courts, and are supplementary to those courts, so as to rapidly dispatch business in cities. These courts have now as much business to dispose of as they can readily undertake, and to further burden them would be to impair their usefulness.

4. To allow cases exceeding \$500 originating in the city court to be there tried and then appealed to the superior court, and then to the Supreme Court, as suggested by the committee, is to give these cases two trials on the facts, besides an appellate trial. This should not be done.

The scheme of the committee leaves the final decision on appeals from the city courts and courts of ordinary in cases under \$500, and in all justice court cases, to one judge of the superior court. I think they ought to be decided by at least two judges. Many cases under \$500 are important, and the well-known attitude of the circuit court judge to *certiorari* cases is such that litigants will not

feel satisfied to submit their final appeal to one judge alone. It is to be borne in mind that the declared purpose of the committee in making these suggestions was not to lessen the labors of the Supreme Court, but rather to save the expense incident to appeals in small cases. This is of minor importance. The people realize the necessity of having fixed and definite laws, and that cases can not always be decided harmoniously and upon proper lines, *unless a certain amount of time is devoted to each case*. They are willing that the Supreme Court should take this time, and accordingly desire to lessen the unnecessary labors of that high tribunal. That is manifested by the recent constitutional amendment increasing the number of judges of the Supreme Court. The people are more interested in the practical and efficient administration of justice than in its cost to each litigant. If our courts seem void or ineffective to the committee, it may possibly grow out of the parsimonious spirit of the past under which they were organized and are now maintained. The form is sufficient, but the provision for maintenance is niggardly. To pay the judge of a great court, one with full jurisdiction over life, liberty and property, less than the salary of an efficient clerk, is to lower its tone and usefulness to society. Things are largely appreciated by what they cost. To make justice cheap and powerless, is to detach from its proceedings and utterances that respect to which it is justly entitled. The people are prepared to remedy all the defects in our judicial system. It is our duty to show them how it can be done, but we should not start by tinkering with the courts, solely to lessen the costs to litigants, but rather to increase their effectiveness, to make each bear its own proper burden, and to save the State and parties litigant from delay, that great inaction which carries with it the danger of the loss of practical justice in each case. Reasonably speedy and exact justice is what the people wish, and any procedure which will tend to accomplish that result is the end to be desired and will be willingly paid for.

Relative to the form of our courts, it might sound better, if we did not have, for example, city courts in some of our larger cities, but had several divisions or departments of the superior court, such

as the criminal and civil, the latter possibly subdivided into law and equity. The present city courts of Atlanta, Savannah and Augusta, and others, are practically nothing but superior courts, without affirmative equity jurisdiction, and we might as well call them superior courts and provide by a general law that, according to the population in any county, there should be as many subdivisions and judges of the superior court for such county as the public business required. Under our present system the *trouble* is not so much with the form, *as with the delay* in getting the machinery of the court—its judicial power—in motion, and in the character of the case that each court is to try. For example, why should the superior court meet only twice a year in each county? While this might have been sufficient fifty years ago, and even now in some few agricultural counties of the State, yet, there is no reason why it should not sit from four to six times a year in the commercial counties. It sits three times a year in Chatham county, which county is now a circuit to itself. Consider a moment. By the Judiciary Act of 1799, the superior courts in Georgia were required to sit twice a year, and for over a hundred years we have made no progress in this particular!

Further, why should the superior courts continue to entertain every kind of case that knocks at their door? It has done this for a hundred years. Is it not entitled to some relief? Could not cases involving under \$500 be tried in some smaller tribunal? I can perceive no reason why they should not, nor why ordinary cases should not be tried at the term at which they are brought, where the defendant has been served fifteen days before. If he needed time to prepare his defense he could get it by making application to the court. Speaking generally, the defendant knows as much about this case before he is served as he does afterwards. If we are to continue to have "terms" in the superior courts, it seems to me that rent cases are no more under the fostering care of the State than any other case of any other litigant, and that no priority or preference should be given in the trial of these cases. As a matter of fact, we have long since progressed beyond the necessity of having any terms at all, except possibly for county organization,

taxation, etc., when the grand jury might meet for such purposes. Why not have the court always open for the administration of justice, rather than theoretically open only for interlocutory equitable relief. Now that all distinctions of law and equity have been abolished, it seems to me that the acceleration of this kind of relief—interlocutory equitable relief—at the expense of others, is unjust.

In making the suggestion that the superior court should sit oftener than twice a year, I of course realize that some one may object on constitutional grounds, but when examined, I submit that this is not prohibited by the Constitution, and that the matter is entirely within the province of the Legislature.

The Constitution of 1877 provides, Code section 5849, that "The superior courts shall sit in each county *not less* than twice in each year, at such times as have been or may be appointed by law." There is no limitation here that the superior court shall sit only twice a year, but that it shall sit *at least* twice, which carries with it the idea that it may sit oftener, if necessary, to transact the public business.

Indeed, in *Boone v. The State*, 86 Ga. 108, the Supreme Court (page 116), in reference to the Act of 1879, touching the jurisdiction and mode of procedure of the superior courts in counties having a city of more than 10,000 inhabitants, and providing that two or more judges of the superior court may preside in banc, or that such courts might be held in two or more sections at the same time by different judges in separate rooms in the court-house or at the county seat, as might be convenient, say, "The Constitution requires *at least* two sittings of the superior court in each county, *but it does not prohibit more sittings to be held*, nor does it prohibit two or more sections of the superior court, presided over by different judges, sitting at the same time where the interests of the public require the same to be done so that justice should not be denied to any one; nor is it unconstitutional because it provides for this scheme only for counties containing large cities, the Legislature having the power to classify in general terms."

Theretofore it had been decided that the Legislature could author-

ize the holding of special terms of the court for criminal business. 47 Ga. 553. The uniformity clause of the Constitution, Code, 5859, providing that the jurisdiction, powers, proceedings and practice of all courts, except the city courts, should be uniform, had no reference to the time when these courts shall sit, otherwise every superior court in Georgia might have to sit at the same time. In speaking of this section the Supreme Court say, in 95 Ga. 101, "That clause does not relate to the time and place of holding courts," and again in 102 Ga. 602, when this section was before the court, it was held to relate to uniformity in jurisdiction as to subject-matter and matters of practice, and not to uniformity in jurisdiction over territory. The court say that if this were not true the Legislature had not yet obeyed the constitutional mandate to establish uniformity in the jurisdiction of the courts.

The Code of 1895 further provides, that the superior court shall be held twice every year, at the several times prescribed by law (section 4340), or at such times as are now, or may be, prescribed by the General Assembly (section 4316). If the Legislature were to change these sections so as to remove the implied restriction against holding only two terms of the superior courts, and allow special laws to be passed in each circuit increasing the terms of the superior court in particular counties, or by a general law direct such courts to be held, say four times a year in those counties of the State in which there was a city having a population of over 10,000, the effect of these additional terms would be to do away with much of the present useless and unnecessary delay, and in many counties causes would be so rapidly disposed of as to avoid the expense to the public of continuing city courts. These, in many instances, could be abolished, and their business transferred to the superior court, which could be divided into as many sections as necessary.

Of course the judicial machinery required in such counties as Chatham, Fulton and Richmond, for example, on account of their wealth and population, would be entirely different from those of say Bryan, Forsyth and Columbia; yet the judicial scheme for all six counties would be alike as far as possible. In considering such

a judicial system, it is entirely safe to proceed with each county as a unit. This has already been the rule in Georgia.

The Judiciary Act of 1799 established in each county the superior and inferior courts. This latter court existed from that time in each county of the State until abolished in 1866. This court had jurisdiction over all county and probate matters, and was concurrent with the superior court in many particulars. It had a jury, but could not try cases involving title to land. It was presided over by five judges, the concurrence of a majority of whom was necessary to a decision.

Viewing this court as a State precedent, the good points of which ought to be utilized, and the policy of the State as indicated by the Act of 1879 as construed by the Supreme Court in *Boone v. State*, 86 Ga. 108, I submit the following as an outline of such a system of courts as would overcome some of the defects of the present. This would, of course, require sundry constitutional changes.

1. There should be a County Court in each county in the State, to have jurisdiction of all claims arising *ex contractu and ex delicto*, under five hundred dollars, and of all criminal cases, both felonies and misdemeanors, wherein a jury in that court might under the present law—as suggested by the committee—reduce the charge of felony to a misdemeanor. Such court should consist of one, two, or three subdivisions, and of one, two, or three judges, learned in the law, as the exigencies of the public business, civil and criminal, or population, might require in any particular county. This court should have jurisdiction and control of all county matters. One of the judges should try all civil and another all criminal cases, unless a jury was demanded; which jury should exist as a right in criminal cases, and in civil cases, when such a jury was demanded ten days prior to the trial of the issues of fact in that court. In all cases in which such demand is not made, the judge should try the case on the law and facts. In cases where demands for jury trials were made, a docket should be made up of such cases, and when a sufficient number had accumulated, say ten, such cases should be heard and disposed of, at the close

of the trials for criminal business, or at such other time as the presiding judge might appoint. This court should be always open. Jury cases should be called for trial at least once a month, and continued until the business was disposed of. One of the judges should at stated times and places, as fixed by the grand jury, sit to hear cases at different points in the county. From all judgments there should be an appeal on all questions of law and fact to the other judges of this court, and a judge of the superior court. If in any county such county court had only one judge, then the appeal should be to the judges of the superior court of that circuit in which that county is located, and if there were not two such judges in that circuit, then to the judge of that circuit and such other judges from an adjoining county court as might be designated from time to time by the Chief Justice of the Supreme Court to preside with the judge of that circuit to hear these appeals. This would provide for a reviewing court of three judges, but which could be held by two judges, one the judge of the superior court. Their judgment, or that of a majority, should be final, unless they disagreed when only two were present, or themselves desired to certify the questions at issue to the Supreme Court, or either of them considered that the question involved was of sufficient importance to have the judgment of the Supreme Court thereon, or that the contemplated judgment of the other was contrary to a unanimous decision of the Supreme Court, in which event they should certify the question at issue to the Supreme Court for decision.

2. There should also be in each county a court having the powers of a court of ordinary or probate court, with the administrative jurisdiction now established by law. Instead of being a separate tribunal, this court of ordinary should be amalgamated with the aforesaid county court, and its probate and county jurisdiction conferred on that court. Certainly in the larger counties of the State such county court would then have one, two, and three divisions—civil, criminal, and matters of administration. Also, three judges, and all appeals from this court could be heard by the two judges who did not participate in the judgment com-

plained of, and a judge of the superior court. This would constitute the reviewing court on questions of law and fact, whose judgment would be final on all cases involving under \$500. If over, there could be an appeal on the law and facts to the superior court.

3. There should also exist in each county or in a district composed of three or four agricultural counties, a superior or circuit court to be composed of one, two, or three divisions, criminal and civil, as the necessities of any county may require, with unlimited jurisdiction both at law and in equity, as now regulated by law, except that it should not have original jurisdiction of claims arising *ex contractu* and *ex delicto* under \$500, but only an appellate and directory jurisdiction. Such superior court should be always open for the trial of causes. It should not meet at stated intervals or terms as we now have, except in such counties of the State where the business would warrant their sitting but twice a year, but in all counties wherein the population exceeded 15,000 they should be always open, and juries should be drawn to try issues both in civil and criminal cases as often as sufficient issues existed to require the action of a jury. All civil cases should be triable by the judge or the judges alone, unless a jury were demanded ten days before the trial of the issues when made up. The effect of having one or more divisions of the superior court according to the population of each county would be to do away with what are now termed city courts. There could be as many judges as there were divisions of the court, fixed according to population, and these judges could sit alternately from time to time in the several divisions, and also preside in the county courts. They should be required to rotate throughout the State, as prescribed by the Chief Justice of the Supreme Court, and their traveling expenses paid by the State. If a review was desired of any judgment rendered in any division of the superior court, a motion for new trial or rehearing should be made before the entire court, in all civil and criminal cases. This should be heard by at least two judges. If heard by only two and they disagreed, as to the judgment to be rendered, they should request the Chief Justice of the

Supreme Court to designate some other circuit judge to preside with them, and the judgment rendered should be final on all questions of fact, but from their judgment there should be an appeal to the Supreme Court upon questions of law.

4. A Supreme Court with the jurisdiction now established by law as an appellate court for the correction of errors aided by the superior court and county courts as above indicated, and with power to direct and control these courts in all decisions to be rendered.

5. In doing away with the terms of courts in the county and superior courts, each case should be heard and determined by the condition of its own record. All civil cases arising *ex contractu* or *ex delicto*, and the pleadings therein, should be brought in the county now required by law, and in accordance with the practice of the superior court. The petition and process should be served upon the defendant, requiring him to enter an appearance within fifteen days after service, and plead within thirty days. Such pleading might be either a demurrer, plea, or answer, and if the defendant failed to appear judgment by default should be entered against him, if a liquidated demand. If the defendant was not prepared to file his defense within thirty days, then he could obtain thirty days longer upon a certificate by his attorney that such time was necessary to prepare his defense. If he could not prepare his defense within sixty days, he could obtain longer time upon application to a judge of the court, setting out the character of his defense and the reason why he desired further time to prepare the same, when, if the circumstances required it, the judge could give him further time. As soon as a defense was filed, it would stand for trial before the judge or judges unless the facts were in issue and a jury demanded. Within thirty days after a decision was rendered upon an issue of law, an answer should be filed, either admitting or denying the allegations in the petition, or they would be taken as true and judgment entered thereon. When the issues of fact are made up the case would stand for trial before a jury, or before the judges without a jury, according as to whether or not the parties failed to demand a jury.

I am well aware that some of the changes herein proposed might be considered radical, but our present system does not conduce to the practical administration of justice. Our courts should be so organized as to assign to each its share in the administration of the public justice, which should be performed in a prompt and businesslike manner. The delay between the terms, is not only an insurmountable foe to the dispatch of business, but really tends to retard justice in many particulars, and also induces appeals from one court to another. By having appeals on the facts confined to the court itself, by an application for rehearing, before all the judges of the court, possibly other than the judge from whose decision the appeal is made, practical justice can be done, and much delay and expense saved to litigants. If followed by an appeal to the Supreme Court on the law of the case, more than half of the troubles of that tribunal would be eliminated at once. Much of what has been suggested could be accomplished by legislative Act, and without constitutional amendment, such as providing for four to six terms a year of the superior court in counties having cities of over 10,000 inhabitants, wherein such courts could be subdivided into divisions.

We should remember that the principles of justice do not change but their mode of application does—that what was satisfactory procedure one hundred years ago, is not so now—nor are our courts in line with the present American spirit of progress. We should endeavor to have them so administer the law, as to make them the preservers of our constitutional rights and liberties and the suppressors of all lawlessness and vice. To this end this Association should present to the legislature at its next session some definite plan for the reorganization of the judicial department of our State government—such as would give to our courts that energy and vitality necessary to challenge the respect and to hold the confidence of the people.

APPENDIX L.

REPORT OF THE COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

Mr. President:

At the last annual meeting of this Association your Committee on Legal Education and Admission to the Bar had the honor to present for your consideration a report upon the general subject of legal education in the State of Georgia, with their recommendation that certain legislation was necessary to the perfection of the system. That report with its recommendations was adopted. Your committee was especially directed to present to the next General Assembly for its consideration such an Act as would be necessary to carry into effect the recommendations made. This was done, and at the session of the General Assembly last passed there was prepared and presented to that body a bill, a copy of which is as follows, to wit:

“Section 1. Be it enacted, That from and after the passage of this Act that section 4406 of the Code be, and is, hereby repealed.

“Sec. 2. Be it further enacted, That section 3 of the Act approved December 18, 1897, relating to and providing for admissions to the Bar be, and the same is, hereby repealed, and that in lieu thereof the following be, and is, hereby enacted: ‘That save as hereinafter provided, no persons shall be hereafter admitted to plead and practice law in the courts of this State, except under the examination now provided by law; *provided, however*, that the judges of the several Superior Courts of this State shall be, and they are, hereby authorized, in their discretion, to admit to the Bar without further examination as to educational qualifications persons holding diplomas from the several law schools of this State which require graduates therefrom to take a course of study covering a

period of not less than two academic years, under a curriculum to be approved by the State Board of Legal Examiners;’ *provided further*, that the court shall in no case dispense with the inquiry into the moral character of the person applying for admission to the Bar; *provided further*, that no attorney licensed by the laws of another State shall be licensed as a regular practitioner in the courts of this State until he shall have taken the regular examination prescribed by law for applicants seeking admission to the Bar in this State; but nothing herein contained shall be construed as prohibiting the judges of the several courts of this State from permitting attorneys from other States to appear in causes pending in the courts of this State in which they may be employed, and in which they may desire specially to appear.

“Sec. 3. Be it further enacted, That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed.”

This bill was introduced in the Senate and passed that body, with an amendment only to the effect that the provisions of this Act shall not apply to such students as have already in good faith matriculated in any of the law schools of this State, and who have not at the date of the passage of this Act received diplomas therefrom; but the law as the same existed at the time of such matriculation shall govern the admission of such students. It was then transmitted to the House, and it was there referred to the General Judiciary Committee. This committee, after consideration of the provisions of the bill, struck out from it the first proviso contained in the second section thereof, and recommended that the same as thus amended be passed. Other public business pressing upon the attention of the General Assembly prevented its further consideration by that body, and thus it failed to become a law.

Your committee respectfully recommends: First, that a similar measure be presented to the next General Assembly, to the end that a uniform system governing the subject of admission to the Bar shall prevail in this State, and that the Legislature may itself have the opportunity of correcting what your committee deems to be an unwarranted exercise of the legislative power for the following reasons.

Your committee is of the opinion that section 4406 of the Code of the State of Georgia, which reads as follows:

"§4406 (398). None of the preceding requisitions are applicable to any graduate of the Law Department of the University of Georgia, the Law School of Mercer University, the Law Department of Emory College, or the Atlanta Law School, but upon presentation of a diploma of graduation from either of these institutions, such graduates shall be authorized to plead and practice in all the courts of this State without further examination, upon payment of the usual fees, and upon taking the oath and receiving the license prescribed by law. And the judges of the superior courts in their respective circuits are authorized, in their discretion, to hold special terms of said courts for the purpose of admitting to the bar any person or persons who may have a diploma from either of such institutions;" and that section 3 of the Act of the General Assembly approved on the 18th day of December, 1897, which reads as follows:

"Section 3. Be it further enacted, That no person shall be admitted to the practice of the law in this State, excepting under the examination herein provided for, but this Act shall not apply to those who have received diplomas from any law school of this State authorized to issue diplomas to students of law, nor shall this Act apply to those who have been admitted to the practice of law in other States which, by comity, admit to practice the duly licensed lawyers of this State," in so far as they require the judges of the superior courts, upon diplomas from the several institutions of learning named, to admit to the Bar persons holding such diplomas; and in so far as they authorize persons holding such diplomas to plead and practice law in the courts of this State without examination, contravene the Constitution of the State of Georgia, and are therefore void.

The special reasons which induce your committee to this conclusion are these: Under the Constitution of the State of Georgia, the powers of the executive, legislative and judicial branches of the government are required to be kept separate, and persons exercising powers and functions belonging to one of the several branches

above indicated are prohibited from exercising the functions and powers pertaining to either of the others.

By a long and unbroken current of judicial authority in this country, including the courts of last resort of many of the States of the Union, where the question has been directly considered, it has been ruled that while the General Assembly may prescribe the qualifications which render one eligible to admission to the Bar, it cannot impose upon the courts the duty of admitting persons possessing such qualifications; and as to whether or not a person possesses such qualifications as render him a fit person to plead and practice law is purely a judicial question, respecting which the judgment of the court cannot be constrained by direct legislative enactment.

In view of this state of facts, your committee respectfully recommends that a committee from this Association be appointed, whose duty it shall be to make the direct question before the courts of this State, to the end that there may be a final determination in the court of last resort in this State of the question as to whether the General Assembly had competent authority to enact into law the provisions contained in the statutory enactments above set out.

Your committee is of the opinion that the legislation in question was enacted possibly without careful consideration upon the part of the General Assembly of the great fundamental principles to which it stands opposed; but however this may be, your committee is of the opinion that the integrity of the judicial power should be recognized and maintained without reference to its effect, either upon the institutions of learning in question, or upon the persons who may hold certificates of graduation from such institutions.

All of which is respectfully submitted.

SPENCER R. ATKINSON,
Chairman.

APPENDIX M.

THE EVOLUTION OF THE AMERICAN LAW OF CONSTITUTIONAL LIMITATIONS.

ANNUAL ADDRESS BY

HORACE H. LURTON, D.C.L.,

of Nashville, Tennessee,

UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT.

This is the natal day of the Republic. On this day one hundred and twenty-six years ago the representatives of thirteen dependent colonies in congress assembled, dissolved the relation which tied them as governmental dependencies to the mother country and proclaimed the birth of the United States of America.

From a constitutional standpoint the supremacy of the British King and Parliament was unassailable and the tie which bound the colonies to England was quite as legal and indissoluble as is the bond which holds the territory of Oklahoma to the Union or the States themselves within its orbit.

The signers of the Declaration of Independence, recognizing their accountability at the bar of history for the momentous step they were taking, undertook, in the instrument itself, to vindicate not only its moral expediency, but its accordance with the highest principles of governmental philosophy.

The constitutional justification for this sundering of our union with Great Britain, the signers staked upon the political philosophy, that all just powers of government are

derived only from the consent of the governed, and that whenever any government becomes destructive to the safety and happiness of the people, it is their right to alter or abolish it and institute a new government, "laying the foundation on such principles and organizing its powers in such form, as to them shall seem most likely to affect their safety and happiness." This is at once a declaration of the dogma of popular sovereignty and of the conditions justifying revolution.

That there were many limitations upon the declaration that all men were equally endowed with the unalienable right of "life, liberty and the pursuit of happiness," is plainly implied from the fact that this declaration was not supposed to include either the Indian or Negro races, nor as in any wise entitling those races in our midst to either political or personal rights, beyond those which might be conceded by the dominating race engaged in organizing the new government and speaking only for themselves.

It is, however, worthy of notice in passing that the few slaves then remaining in Massachusetts were subsequently declared by the Supreme Court of that commonwealth to have been emancipated by the inherent force of the declaration that the right of life, liberty and happiness was a natural and unalienable right.

The Declaration of Independence, like every other human document, must be read and interpreted in the light of surrounding circumstances. It was a political declaration by a proud branch of the masterful Caucasian race concerning the organic principles upon which a government by, of and for a Caucasian people should rest.

I resist the temptation to further consider the proper bearing of some of the organic principles of free government embodied in that matchless instrument upon some of the questions of current political interest, as not proper for this time or occasion, and come to an aspect of this assertion of

popular sovereignty which lies very closely within the proper domain of a Bar Association, for out of this American doctrine, that the people are the source of all just governmental authority, has been evolved the whole body of our Constitutional law.

This principle, that sovereignty resides not in emperors, czars or kings, not in parliaments, congresses or legislatures, but in the people, was the keystone in the arch of the government then being founded.

The sovereignty of the people, collectively, thus asserted, not only challenged all rulership which rested its claims upon the sacrilegious pretense that political authority might be conferred through the "Grace of God" by the interposition of priestly hands, or that it came through dynastic lines descending from some robber baron or conquering chieftain: but its main significance lies in the fact that it was also a denial of the omnipotence of even parliaments, congresses and every other form of delegated legislative authority, vainly pretending to speak as having absolute legislative power.

We are not left in doubt as to the scope of the power thus asserted, for contemporaneously with this declaration of ultimate governmental authority, the people of the several States proceeded to legislate in their popular capacity by the enactment of organic laws prescribing the form of government which they proposed to institute, and defining and distributing the powers which they proposed to delegate to the governments so instituted.

These organic laws, having their sanction in the direct action of the people, and alterable, amendable or repealable only according to the method provided by the instrument itself, we call constitutions.

The exposition of the limitations thereby imposed upon the governments thus instituted constitutes that majestic

branch of American law which we know as the law of Constitutional Limitations.

The evolution of this branch of our law constitutes the subject to which I invite your attention.

AN AMERICAN CONSTITUTION A GRANT OF POWER BY THE PEOPLE.

Constitutions were not new when we began constitution making. The term was one which had at all times been used to define that body of political maxims or fundamental principles upon which a government is founded and by which it is conducted. Such organic principles might, as they most often did, consist only in certain well understood ancient customs, or they might be collected from such customs in connection with ancient charters or statutes settling or recognizing the form of the government and declaring personal or political rights. The latter is descriptive of the British Constitution, which is not only the most ancient, but the most liberal of all countries not organized on the American plan. Neither is it of any great significance that the constitutions of our States and of the United States consist of a single written instrument. There were indeed earlier examples of such rigid constitutions, one of which, the famous Instrument of Government of 1653, may have inspired our constitution makers.

The peculiar significance of these American fundamental instruments of government lies in the fact, that they are grants of power from the people to their government, and not concessions of liberties granted to the people, nor limitations imposed by government upon itself.

Being grants of power to the government, the powers which may be constitutionally exercised are from necessity limited by the grant.

This principle of construction we are familiar with as peculiarly applicable to our Federal Constitution, but it is equally so to our several State Constitutions.

The difference between the grant of powers to the government of the United States and the grant of powers by the people of the State of Georgia to the government of that State, is, that in the first case the grant is one of enumerated powers, authority in respect only to certain definite subjects being granted in specific terms. Therefore, the rule that a Federal Act of legislation is unauthorized unless the authority is granted in express terms or plainly implied from the powers specifically granted. On the other hand, the people of Georgia have by the organic law framed and enacted by them granted all legislative power to the legislative branch of their State government, which they themselves might exercise, except in so far as it has been granted to the Congress of the United States, or is reserved by the instrument itself. Hence the rule of construction applicable to the exercise of the legislative power of a State is, that the law is valid unless prohibited by some provision of the Constitution itself.

Thus in both cases the principle holds good that an American Constitution, whether it be the Constitution of the United States or the Constitution of one of the States, is a grant of power, and that the power which may be constitutionally exercised must be authorized by the grant.

These fundamental principles of constitutional construction are doubtless very familiar to all of you as rules of interpretation applicable whenever and wherever the duty of interpretation arises.

My object in calling attention to them has been that we may consider their force when applied to legislation outside the limits of the constitutional grant.

A CONTRAST.

The question thus suggested would be of no significance whatever to either an English or continental lawyer.

The great charter granted by King John, from which came

most of those great principles of personal liberty which we prohibit our Legislature from infringing by including them among the reserved and unalienable rights of the people, is little more than an early act of the English Parliament, and is therefore subject to repeal or alteration as any other act of that body.

The right to acquire and enjoy property, the right of trial by jury, the right to the enjoyment of life and liberty, are all rights which are as precious to Englishmen as they are to Americans. But what is the security for their continued enjoyment? Their inviolability is pledged in many an ancient charter or statute. But it is a fundamental principle of the British Constitution that the Parliament is omnipotent and irresponsible.

What Parliament has done it may undo. Magna Charta, the Bill of Rights, the Settlement Act, the Habeas Corpus Act, are all mere acts of Parliament, and as such are subject to suspension, amendment or appeal.

The House of Lords, which for a thousand years has been an essential part of the government, may be abolished by an Act of Parliament. The descent of the crown may be changed, as it has been more than once. By a mere act of legislation the loftiest head in the kingdom may be laid upon the scaffold without a hearing or the judgment of a jury. Witness the case of Archbishop Laud in the time of Charles I. by an act of the Long Parliament.

No rights of property are above the power of Parliament. The late Irish Tenant Act is an example. By that act a tenant right is created in the estate of the landlord by reason of improvements made without consent of the owner, and by it the landlord may be compelled to renew an expired lease or sell to the tenant on terms settled by a tribunal before which the tenant may summon him.

An English court has no power to declare an English Act of Parliament void or unenforceable because repugnant to the

British Constitution. Of the English Parliament Sir William Blackstone said: "True it is, that what the Parliament doth no authority on earth can undo," and quotes Sir Matthew Hale as saying of it, that "being the highest and greatest court, over which none other can have jurisdiction in the Kingdom, if by any means a misgovernment should any way fall upon it, the subjects of this Kingdom are left without all manner of remedy." The law of Constitutional Limitations has, therefore, no place in the education of a British lawyer. France, since 1789, has had a succession of constitutions, the fruit of constituent conventions. But none of these instruments have proved effective as restraints upon the legislative power. Constitutions are set aside, suspended or ignored with less formality even than we would deal with an ordinary act of legislation. The solemn oath which is taken by the French deputies to observe and uphold the constitution has proven no barrier. Having the unlimited power of interpretation they find no difficulty in adopting expedients to meet the necessities of each case.

"The limitations imposed by French Constitutions are not," says Dicey in his *Law of the Constitution*, "in reality laws, since they are not rules which in the last resort will be enforced by the courts. Their true character is that of maxims of political morality, which derive whatever strength they possess from being formally placed in the Constitution and from the resulting support of public opinion."

No country in Europe possesses a court which would venture to decline the enforcement of a law simply because the law was in conflict with a so-called Constitution.

The attitude of the German courts is well illustrated by the case of *Gerbade v. The State of Bremen*, a report of which may be found in Professor Thayer's cases on Constitutional Law.

The Constitution of Bremen contained a provision prohibiting the taking of private property except for public uses

and upon due compensation. A law was passed which plainly conflicted with this.

The Hansèatic Court of Appeal held the law void upon the ground of the conflict with the Constitution.

"The judge," said the Hansèatic Court, "is to be considered competent to make this decision, even without any authority having been explicitly given him by a special law; because he is obliged to apply the laws and because the application of two existing laws, conflicting with one another, is an impossibility.

"The recognition of the legal principle that the judge is not to apply a law conflicting with the Constitution includes therefore no assertion of a superiority of the judge over the lawgiver.

"So doing is merely an acknowledgment of his authority, in an actual case of conflict, to apply that law which general legal principles require to be applied."

The influence of American constitutional principles is clearly evident in the reasoning by which the nullity of the ordinary law was declared.

But *Gerbad v. Bremen* was expressly overruled by the Imperial Tribunal in the case of the *King v. Dyke* Board of *Niedervieland*, also a Bremen case. The latter court, being the Supreme Court of the German Empire, held in the case referred to that a constitutional provision "is to be understood only as a rule for the legislative power itself to interpret, and does not signify that a command given by the legislature should be disregarded by the judge."

Continuing, that court said: "The question is not whether a peculiar principle of the Constitution has been altered or not, but whether the law could have been enacted without an alteration of the Constitution itself, and therefore without applying the forms prescribed for such alteration. This last question, however, is one which can not be examined by the judiciary."

It must be very evident, if the courts can not, when called upon to enforce a law, inquire and determine whether the lawmakers have exceeded the authority granted them, that the whole theory of limiting by constitution the power of the government thereby created is illusory, and, as declared by Chief Justice Marshall, "written constitutions are absurd attempts on the part of the people to limit a power in its own nature illimitable."

SOME EARLY PRECEDENTS FROM STATE COURTS.

At a very early day the true conception of a Constitution as a paramount law limiting the powers of every department of government was recognized and enforced by American courts. Professor Thayer, in his *Constitutional Cases*, refers to two unreported cases in which legislative acts were held invalid for repugnancy to constitutional provisions.

One of them is reported to have been decided by a Virginia court as early as 1778, the other was decided by a New Jersey court in 1780.

The earliest reported case is that of the *Commonwealth v. Caton*, decided by the Virginia Court of Appeals in 1782. The decision of the court was by Justice Wythe, a signer of the Declaration of Independence and the legal preceptor of the distinguished John Marshall.

The decision, as I once before had occasion to say in an address to the Bar Association of Ohio, "though somewhat bombastic," was a bold and clear announcement of the power and duty of the courts to compel observance of the paramount law by the legislative department of the government.

The very vigorous Justice, in considering the duty of the Court to respect and enforce the Constitution of the State, said: "Nay more, if the whole legislature, an event to be deprecated, should attempt to leap over the bounds prescribed to them by the people, I, in administering the public justice of the country, will meet the united powers at my seat

in tribunal, and pointing to the Constitution, will say to them, here is the limit of your authority and hither shall you go, but no further."

The legislature of Rhode Island passed a law under which irredeemable paper money was authorized and compelling its acceptance in all business transactions at a rate fixed by the Act. The paper was naturally much depreciated, and the loss promised, as in all such cases, to fall upon that class of the community least able to bear it.

To compel its circulation the law provided that any one who would not receive this fiat money at the rate settled by the law, should incur a fine and be committed to jail until the judgment should be performed. The law also provided for a trial without jury and a summary proceeding.

Two butchers, Trevitt and Weedon, refused to accept this currency for meat sold in the market. Summary proceedings against them were started before the judges of the Supreme Court, which held the law to be unconstitutional and void. The case was decided in 1786. From the notes of Judge Thayer we learn that the judges were summoned before the Rhode Island Assembly "to render reasons for adjudging an act of the General Assembly unconstitutional and so void."

The judges appeared and denied the right of the legislature to call them to account for their judgment. After much discussion the matter was dropped upon the opinion of the attorney-general that the judges could not be punished or deprived of their offices without impeachment.

The case of *Bayard v. Singleton* was an early case decided by the Supreme Court of the State of North Carolina in 1787, a date antecedent to the adoption of the present Constitution of the United States. The case is reported in 1 Martin N. C. 42. The law involved was one which was intended to quiet the titles to Tory estates acquired under sales made by the commission for forfeited estates, by for-

bidding the courts to entertain any suits brought to challenge titles so acquired.

The question of the validity of the law arose under a motion to dismiss a pending action of ejectment upon the ground that the defendant's title had been acquired under the forfeited estates act. It is stated by the reporter of the case that the judges, appreciating the gravity of a conflict between the judicial and legislative departments of the government, endeavored to bring about some adjustment of the suit, but did not succeed. It is then said that each judge, with great deliberation and apparent reluctance, announced his conclusion to be that the motion should be denied because the law conflicted with the Constitution of the State.

Among other considerations the Court said :

"That by the Constitution every citizen had undoubtedly a right to a decision of his property by a trial by jury. For that if the legislature could take away this right, and require him to stand condemned in his property without a trial, it might with as much authority require his life to be taken without a trial by jury, and that he should stand condemned to die without the formality of any trial at all; that if the members of the General Assembly could do this, they might with equal authority, not only render themselves the legislators of the state for life, without any further election of the people, and from thence transmit the dignity and authority of legislation down to their heirs male forever.

"But that it was clear that no act they could pass could by any means repeal or alter the Constitution, because, if they could do this, they would at the same instant of time destroy their own existence as a legislature and dissolve the government thereby established. Consequently the Constitution (which the judicial power was bound to take notice of as much as of any other law whatever), standing in full force as the fundamental law of the land, notwithstanding the act on which the present motion was grounded, the same

act must of course, in that instance, stand as abrogated and without any effect."

This doctrine, that to the courts are committed the power and duty of comparing an ordinary law with the paramount law of the Constitution, and of refusing to enforce the subordinate law if beyond the power of the legislature, was thus first announced and applied in State courts, and with reference to conflicts between State constitutions and State laws.

The five decisions to which I have referred all antedate the adoption of the Constitution of the United States and constituted a judicial exposition of the doctrine of Constitutional Limitations of very commanding influence long before similar questions arose under our Federal Constitution. The question of the force and effect of laws of Congress not authorized by the powers of Congress under the Constitution attracted very little attention in the convention which framed that instrument.

FEDERAL JUDICIAL POWER.

The old articles of Confederation provided for no Federal judicial system whatever.

There is no more self-evident truth than that the first requisite of an independent government is judicial power and an efficient independent judicial system, by means of which its own laws may be interpreted and administered in cases arising under them.

This defect was provided for by a provision in the present Constitution by which it was declared, that the judicial power of the United States extends "to all cases in law and equity arising under the Constitution, the laws of the United States and the treaties made, or which shall be made, under their authority."

The supremacy of the Constitution as the paramount law whenever it applied was not left to inference, for the Constitution itself provided that: "This Constitution and the laws

of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

It is significant that it is "the laws of the United States which shall be *made in pursuance*" of the Constitution which are declared to be "the supreme law of the land." "Made in pursuance thereof" plainly means in pursuance of the powers conferred by the Constitution upon the Congress in which the legislative power of the United States is vested. While the Constitution and laws made under its authority are declared to be the supreme law, yet there is no explicit declaration as to how the supremacy of the Constitution over the laws made by Congress or by the lawmaking power of the State is to be enforced.

If Congress is to determine for itself whether the Constitution authorizes a particular law, then that body would constitute an irresponsible lawmaking body, for the Constitution would become a mere body of political maxims which the Congress might or might not observe as it should see fit.

In the Federalist, Hamilton had urged that an independent judiciary was peculiarly essential to a people governed under a limited constitution.

"Constitutional Limitations," said he, "can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to determine all acts contrary to the manifest tenor of the Constitution void." "Without this, all the reservation of particular rights or privileges would amount to nothing."

In the debate before the Virginia Constitutional Convention, Marshall, afterward the great Chief Justice, speaking of the limitations upon the power of Congress, said:

"Can they go beyond the legislative powers? If they

were to make a law not warranted by any of the powers enumerated, it would be considered by the judge as an infringement of the Constitution which they are to guard. They would not consider such a law as coming under their jurisdiction. They would declare it void."

The question came on to be decided by the Supreme Court in *Marbury v. Madison*. In that case a provision in the Judiciary Act of 1789, extending the original jurisdiction of the Supreme Court, was held void as repugnant to the Constitution. The opinion was by Chief Justice Marshall, and is one of his most able expositions of constitutional limitations and an unanswerable vindication of the jurisdiction of the court to declare an act of legislation void which is beyond the scope of the legislative power of Congress.

The Chief Justice cites no precedents for the decision, yet it is hardly conceivable that he was not aware of the Virginia and North Carolina cases involving a like question, both of which were then accessible in the official reports.

It is to be observed, however, that the Chief Justice was not much in the habit of citing cases. His biographer, Magruder, says that in his day there were living witnesses who, speaking of this fact, said: "That he was wont, at times, to say substantially in the conclusion of his masterly decisions: these seem to me to be the conclusions to which we are conducted by the reason and spirit of the law. Brother Story will furnish the authorities."

A VINDICATION OF THE SUPREME LEGISLATIVE POWER OF THE PEOPLE.

These cases established forever in both State and Federal courts the political doctrine that behind the legislative, executive and judicial power of an American constitutional government lies the supreme legislative power of the people, who proclaim their will in the most solemn and lasting of all legislative forms by the enactment of written constitu-

tions, dividing the powers of government between the three great departments and limiting the powers to be exercised by each.

The legislative branch of a constitutional government is no more the representative of the people in a constitutional sense than the executive or judicial departments.

All alike are the agents of the people and the limit of authority intrusted to each is that defined by the organic law, which is the highest expression of the popular will.

The exercise of jurisdiction resulting from the judicial duty of applying and enforcing that law which is applicable to the case and of the highest obligation has frequently resulted in most disagreeable conflict with the legislative department of government.

I have elsewhere referred to the legislative resistance to the action of the Rhode Island Supreme Court. In 1805 two judges of the Ohio Supreme Court were impeached for holding a law invalid. They escaped conviction only by the failure to secure a two-thirds vote for conviction.

In Georgia so late as 1815 the Legislature of that State passed a resolution in these words :

“Whereas, John McPherson Berrien, Robt. Walker, Young Gresham and Stephen W. Harris, Judges of the Superior Court, did on the 13th day of January, 1815, declare certain Acts of the Legislature to be unconstitutional and void ;

“Whereas, The extraordinary power of determining upon the constitutionality of Acts of the State Legislature, if yielded by the General Assembly, whilst it is not given by the Constitution or laws of the State, would be an abandonment of the dearest rights and liberties of the people, which we, their representatives, are bound to guard and protect inviolate ;

“*Be it therefore resolved*, That the members of this General Assembly view, with deep concern and regret, the aforesaid conduct of the said judges, . . . and they cannot

refrain from an expression of their entire disapprobation of the power assumed by them of determining upon the constitutionality of laws regularly passed by the General Assembly; we do, therefore, solemnly declare and protest against the aforesaid assumption of powers, and we do, with heartfelt sensibility, deprecate the serious and distressing consequences which followed such decision; yet we forbear to look upon the past with severity, in consequence of judicial precedents, calculated in some measure to extenuate the conduct of the judges, and hope that for the future this explicit expression of public opinion will be obeyed."

Curiously enough the people of Georgia, to guard against further danger of legislative usurpation in this respect, have since inserted a clause in the Constitution of 1877 which provides, "that legislative acts in violation of this Constitution, or the Constitution of the United States, are void, and the judiciary shall so declare them."

THE AMERICAN PLAN.

These instances afford most signal illustrations of the constant tendency of the legislative branch of government to encroach upon the other departments, and especially upon the independence of the judiciary.

"It is against this department that the people," said Madison, "ought to indulge all their jealousy and exhaust all their precautions."

That department is the most numerous, its authority is far more extensive and least capable of being held within precise limits. It holds and wields at once the power of the purse and the sword, and most often makes its encroachment upon the other departments by indirect measures wearing a popular aspect.

The theory that sovereign power resides alone in the people has ever been the central dogma of the American people. While we have not lacked for Cleons who have preached the

gospel of direct popular legislation in association with much that smacks of socialism and paternalism, yet the American people have made popular government possible by a firm adherence to the representative democracy inculcated by our fathers, the sovereignty of the people being exerted through the medium of representatives whose powers are limited by Constitutions, which are but legislative expressions of the supreme will of the people enacted by a supreme exertion of the popular will.

The mere idea of popular sovereignty was not new. But the problem had not been solved as to how the despotism of such an authority might be so restrained as to secure individual liberty under law.

This problem has been solved by what we call the American plan of limited constitutions. The supreme legislative power of the people is thereby recognized. But under that plan it is to be exercised only on great occasions and through organic enactments dealing with large questions. The popular legislative authority is by such constitutional enactments delegated to representatives whose powers are limited by the instrument under which they come into existence. To prevent departure from the granted powers vested in the government, the judiciary has been given the authority, in the ordinary administration of justice, to compare every law with the paramount law proceeding from the popular will, and to declare void every law which does not conform thereto.

AN INDEPENDENT JUDICIARY.

It is a gross mistake to assume that in presuming to exercise such a power the courts are either assuming a superiority over the legislative department of government or defeating the popular will. If they presume to declare a law invalid which has been formally enacted, it is because they recognize in the limitations of the constitution imposed by the people

upon the legislative branch of their government a law of supreme authority.

The judicial department of government is in its very nature the weakest and most defenseless of the great departments into which, under all of our American governments, the powers of government have been divided.

Without the assistance of the legislative department its functions cannot be exercised.

The boundaries of its jurisdiction are comparatively plain. Its projects for usurpation are easily discernible and are sure to excite popular alarm, even beyond the occasion. Even its judgments can not be enforced without executive assistance.

We must all recall the dignified protest of the Circuit Court of the District of Columbia in *United States v. Murphy*, and that of the venerable Chief Justice Taney in *ex parte Merryman*, on finding their process obstructed by a force which the executive power refused to suppress.

"I have," said the Chief Justice, "exercised all the power which the constitution and laws confer upon me, but that power has been resisted by a force too strong for me to overcome; . . . I shall therefore order all the proceedings in this case, with my opinion, to be filed and recorded in the Circuit Court of the United States for the District of Maryland, and direct the Clerk to transmit a copy under seal to the President of the United States. It will then remain for that high officer, in fulfillment of his constitutional obligation to 'take care that the laws be faithfully executed,' to determine what measures he will take to cause the civil process of the United States to be respected and enforced."

Such instances have been rare. The ordinary executive staff subject to the direction of the courts has proved itself sufficient to enforce the commands of the law, and when the extraordinary assistance of the executive department has been needed it has seldom been withheld.

The American system of government under limited constitutions has not failed. The great principles of individual liberty and free government have been preserved and enforced. We have given to the world a shining example of the capacity of a people to govern themselves. Upon our own initiative liberty is regulated by law and the freedom of the individual ends where the liberty of another begins.

The bulwark of every limited constitutional government is an independent judiciary. Such a government is impossible unless the judiciary may refuse the enforcement of a law which violates the plain sanctions of the constitution. If you would preserve the form of government under which our achievements have been so splendid, there must be behind your judiciary an intelligent, alert and outspoken public opinion, cherishing and upholding your judges in the exercise of an independent and conscientious judgment in respect to every question within their jurisdiction.

Judicial oaths, obligatory statutes and mandatory constitutions will be of no avail in giving you a clean, able and independent judiciary compared to a sound public opinion which demands uprightness and independence in the administration of justice by an honest enforcement of every law, constitutional or legislative, regardless of personal consequence. Whether such judges can best be secured by appointment or election and whether their terms should be long or short is beyond the range of this address. Both systems have their advantages and disadvantages. Under each plan we have had an occasional instance of a corrupt judge, or a usurping judge, and more often examples of weak judges. That there have been so few instances of bad judges, whether chosen under one plan or the other, is worthy of note. In the ranks of the disciples of the Saviour there was found one Judas.

ANOTHER PHASE OF THE SAME JURISDICTION.

It is no less the duty of a State court than of United States courts to refuse to enforce a State law which conflicts with the Constitution of the United States. The State judges are sworn to support the Constitution of the United States as well as the Constitution of the State whose commission they hold. The Constitution of the United States, after providing that it, and the laws of the United States made in pursuance thereof, shall be the supreme law of the land, provides in explicit terms, that "the judges in every State shall be bound thereby, everything in the constitution or laws of any State to the contrary notwithstanding."

The obligation of the Federal judge and of the State judge to declare null and void any law of the State or of the United States which shall be in conflict with the Constitution of the United States stands therefore upon the same plane. And the obligation of the State judge to enforce the Constitution of his own State is no greater than his duty to enforce the Constitution of the United States.

But the question quickly arose as to whether there was any final arbiter and expounder of the Constitution and laws of the United States.

The Constitution ordained that the judicial power should extend to all suits arising under it or any law of Congress made thereunder.

But the Congress did not see fit to give to the courts of the United States exclusive jurisdiction in all such cases, but, by the Judiciary Act of 1789, provided, that the courts of the United States should have *concurrent* jurisdiction with the State courts in all such cases. The result is that many suits may be prosecuted in State courts which involve rights, titles, privileges or immunities which depend upon the Constitution or laws or treaties of the United States.

The question soon arose as to whether there was any way in which a judgment of the highest court of a State could be

corrected which denied to a suitor some right, claim, title or interest which arose under or depended on the Constitution or laws of the United States.

The first judiciary act ever passed by Congress was the act, yet in force, of 1789. Now that act provided for a review by the Supreme Court of the United States of all cases in which the highest court of a State to which the question could be carried had decided adversely to a right, title, claim, immunity or privilege claimed under the Constitution or a law of Congress or a treaty of the United States.

This was a contemporaneous congressional construction of the Constitution made by a Congress composed largely of men fresh from the great contest over the adoption of the Constitution. As such it was entitled to a considerable degree of respect as a construction favorable to the insistence that the Supreme Court of the United States was the final arbiter in every case involving the application or interpretation of the Constitution or laws of the United States.

In *Marton v. Hunter* and *Cohen v. Virginia*, the power of the Supreme Court to entertain a writ of error from the Supreme Court of Virginia in cases in which the plaintiff in error had been denied a right, claim or immunity under the Constitution and laws of Congress was finally decided and forever put beyond the pale of further discussion, in favor of the jurisdiction. A contrary decision would have resulted in a holding that the Constitution and laws and treaties of the United States might receive as many different constructions as there should be States, and that the Constitution had provided no final tribunal for the final construction of itself or of the laws and treaties made in pursuance thereof.

Cohen v. Virginia was not decided until 1821.

The judgment of the court was concurred in by each of the judges, including Justice Story, who was the most famous of the Anti-Federalist lawyers of his day and the choice of Mr. Jefferson, who placed him on the bench to combat the

supposed Federal tendencies of Chief Justice Marshall. *Marbury v. Madison*, *McCullough v. Maryland*, and *Cohen v. Virginia* may be regarded as finally and conclusively settling the doctrine, that the Supreme Court of the United States is the final arbiter for the settlement of all questions in respect to the construction and application of the Constitution and laws of the United States.

This judicial determination of the judicial authority in such cases did not silence all objectors, and there have been some notable instances of criticism and open denial.

JEFFERSON'S TORRENCE LETTER.

Cohen v. Virginia brought out Mr. Jefferson's letter denunciatory of the Federal courts as "thieves of jurisdiction and underminers of the Constitution."

But Mr. Jefferson had always entertained very peculiar notions in reference to the functions of the courts, State as well as Federal, in the matter of interpreting and applying constitutional provisions which involved the action of either the legislative or executive departments.

In January, 1815, the Supreme Court of Georgia held a stay law enacted by the Legislature to be void as an impairment of the obligation of contracts.

Under date of June 15, 1815, Mr. Jefferson replied to an inquiry from W. H. Torrence as to his opinion of the validity of the law, and of the authority of the courts to decide on its constitutionality.

In answer to the inquiry the venerable statesman expressed the opinion that the suspension of the remedy would not be an impairment of the obligation of the contract.

In regard to the authority of the courts to decide on the constitutionality of the law, he stated that *two opinions* were entertained on that subject. The opinion to which he gave his assent was that "that branch (of government) which is to act ultimately, and without appeal, on any law, is the

rightful expositor of the validity of the law, uncontrolled by the opinions of the other coordinate authorities." Thus, he said, when a court had to determine what was the law which applied to a case in hand, that as they decide such questions ultimately and without appeal "they of course decide for themselves." So, said he, the Executive and the Legislature must each for itself judge of the constitutionality of the law. He admitted that such a rule would bring about contradictory as well as fluctuating decisions; but thought this would result in no great inconvenience. The other opinion which he said was so plausible as to lessen his confidence in his own was "*that the Legislature alone is the exclusive expounder of the sense of the Constitution, in every part of it whatsoever.*"

This opinion doubtless inspired the action of the Georgia Legislature in condemning the Georgia Supreme Court for holding void the very stay law about which Mr. Jefferson's opinion was asked, an action elsewhere referred to.

This Torrence letter was written in 1815. *Marbury v. Madison* was decided in 1803. Thus, twelve years before this expression of opinion by Mr. Jefferson the Supreme Court of the United States had unanimously determined that neither the Congress of the United States nor the Chief Executive was the final interpreter of the Constitution, but that to the Supreme Court was committed the function of interpreting that instrument. It had also in that case expressed the opinion that an executive officer might be compelled by a court, having jurisdiction to issue writs of mandamus, to do any purely executive act which he was required by law to do not involving the exercise of discretion.

Marbury v. Madison arose during Jefferson's administration, and grew out of Jefferson's direction to Madison, his Secretary of State, to refuse delivery of certain commissions which had been signed and sealed by Mr. Adams, Mr. Jefferson's predecessor, but not delivered.

The court after deciding that the appointments were irrev-

ocable, and that delivery of the commissions had been wrongfully refused, held that the act of Congress authorizing the Supreme Court to exercise original jurisdiction by mandamus in cases involving title to office was invalid as in excess of the power of Congress.

It is also to be noted that when Mr. Jefferson wrote his Torrence letter more than half of all the State courts had already announced a rule in direct antagonism to both of the rules considered by him, among them being the Supreme Court of his own State, Virginia.

In view of this public history it is remarkable that Mr. Jefferson should conclude his letter with the statement: "Between these two doctrines every one has a right to choose, and *I know of no third meriting any respect.*"

It is impossible to suppose Mr. Jefferson ignorant of the doctrine which had then become as well settled as judicial opinion and public acquiescence could settle a doctrine which had a political aspect, and we must infer that the settled doctrine was one which, in Mr. Jefferson's opinion, merited "no respect," and should not be acquiesced in.

In view of his opinion in respect to the want of authority in a State court to finally and conclusively interpret and apply a State constitution to a State law, it is not wonderful that he should regard *Cohen v. Virginia* as a monstrous "theft of jurisdiction."

OTHER DISSENTERS.

But in entertaining the idea that no interpretation of the Constitution by the Supreme Court was binding upon the President or the Congress, Jefferson was not alone. Similar views were expressed by Jackson in reference to the power of Georgia to legislate for the Cherokee Indian tribe within her borders. Jackson entirely agreed with the claim of jurisdiction made by Georgia over the tribe of Indians. The Supreme Court decided adversely to Georgia. Jackson was

then the President and is reported as saying: "John Marshall has made his decision, now let him execute it."

The matter never came to an issue, for the Indians, weary of the struggle, sold their lands and were removed to the Indian Territory.

Lincoln was equally indisposed to yield to the authority of the decision of the Supreme Court in the Dred Scott case in respect to the want of authority in Congress to exclude slavery from the territories, and the Republican National Convention of 1860 repudiated the doctrine of that decision as a dangerous political heresy, claiming that the normal condition of the territories was that of freedom and that it was the duty of Congress to maintain that condition.

Upon that platform Mr. Lincoln was elected. The irritation and distrust due to his attitude, and that of his party, upon this issue of slavery in the territories led to the great secession in 1861 and the civil war which followed.

THE WISCONSIN COURT.

The most conspicuous instance of judicial repudiation of the authority of the Supreme Court is that furnished by the Supreme Court of Wisconsin. That court, as late as 1855, discharged upon a writ of *habeas corpus* a prisoner from the custody of a United States marshal who had been duly convicted in a United States Court of an offense against the United States by a violation of the Fugitive Slave Law. The Wisconsin Court not only held that the conviction was a nullity because the Fugitive Slave Law was in conflict with the Constitution of the United States, but determined that its jurisdiction was final and conclusive upon all the courts of the United States, and ordered its clerk to disobey any writ of error which might issue from the Supreme Court of the United States. The Supreme Court of the United States, in a very masterful opinion by Chief Justice Taney, concurred in by every member of the court, vindicated again the supremacy

of that court in all cases arising under the Constitution and laws of the United States.

Touching questions which might involve the respective powers of the United States and of the States under the Constitution, the venerable Chief Justice said:

“And as the final appellate power in all such questions is given to this court, controversies as to the respective powers of the United States and the States, instead of being determined by military and physical force, are heard, investigated, and finally settled, with the calmness and deliberation of judicial inquiry. And no one can fail to see, that if such an arbiter had not been provided, in our complicated system of government, internal tranquillity could not have been preserved; and if such controversies were left to arbitrament of physical force, our governments, State and National, would soon cease to be governments of laws, and revolutions by force of arms would take the place of courts of justice and judicial decisions. . . . This tribunal, therefore, was erected, and the powers of which we have spoken conferred upon it, not by the Federal government, but by the people of the States who formed and adopted that government, and conferred upon it all the powers, legislative, executive, and judicial, which it now possesses.”

PROPOSED CONSTITUTIONAL AMENDMENT.

Notwithstanding an occasional discordant opinion, there has from the beginning been substantial unanimity in the recognition of the authority of the State courts to declare void a State law which conflicted with the State constitution. Though the same authority was from the earliest beginnings of our constitutional history claimed for and exercised by the Supreme Court of the United States, and seemingly upon even stronger grounds than that occupied by the State courts, for the Constitution itself declared that it should be the supreme law of the land, and that the judicial power of the United States should extend to every case arising under it and the

laws of the United States, yet there has at every period of our history been more or less political agitation against its exercise.

The famous Virginia and Kentucky resolutions of 1778 and 1789 included an assertion of the power and authority of the States to determine, each for itself, any question as to whether the Constitution had been infringed and the proper mode of redress. These resolutions were sent to the legislatures of each State. The general tenor of the replies made was that the Supreme Court was the final arbiter as to the validity of the laws of Congress.

The legislature of Pennsylvania passed a law which forbade the execution of a decree of the District Court of the United States rendered in a prize case. The District Judge, intimidated, declined to issue process, fearing civil strife.

The Supreme Court of the United States, upon application for a writ of mandamus to compel the issuance of process, held the Pennsylvania law void and ordered the decree to be executed by proper process. *U. S. v. Peters*, 5 Cranch, 115. This aroused the pride of Pennsylvania, and her senators and representatives were instructed to procure an amendment to establish a particular tribunal, to whom might be referred all questions in respect of the authority of Congress and of the States under the Constitution.

These resolutions were communicated to the legislatures of all the States, and they were invited to join in bringing about such an amendment.

Georgia, Virginia, Tennessee, Ohio and several other States are known to have passed resolutions deprecating any such amendment. But subsequently the Supreme Court reversed *Cohen v. Virginia*, which so incensed Virginia that her legislature adopted a resolution protesting against the jurisdiction of that court upon the ground that "there is no rightful authority in the federal judiciary to arraign the sovereignty

of a commonwealth before any tribunal but that which resides in the majesty of the people."

I am not able to lay my hands upon the resolutions passed by Georgia or Ohio in response to the Pennsylvania outcry. But when, in the case of the *Bank of the United States v. Osborn*, 9 Wheaton, 78, it was decided that the State of Ohio could not tax the bank because it was an instrumentality of the United States, there arose much constitutional indignation, and the legislature of that State passed resolutions indorsing the Virginia and Kentucky resolutions of 1798, and declaring the right of Ohio to tax the bank, and protesting "against the doctrine that the political rights of the separate States and their powers as sovereign States may be settled or determined in the Supreme Court, so as to conclude and bind them in cases contrived between individuals and when there are no one of them parties direct."

Georgia's time for approving the Pennsylvania plan for a separate tribunal came in 1833, in consequence of her disapproval of the decision in the *Cherokee* case. She then by resolutions proposed an amendment. But her clamor was in vain. Her sister States refused to join in urging the new tribunal.

The last notable instance of legislative protest was that of Wisconsin and arose out of the decision in *Abelman v. Booth* already referred to. The resolutions were remarkably fiery and urged "positive defiance as the rightful remedy" for such usurpation of authority as had occurred in that case.

OPINION AFFECTED BY POINT OF VIEW.

The standpoint from which we view even a constitutional question is most apt to distort our vision.

Slavery was the fruitful source of nearly all of our differences with our friends of the North and the chief occasion of our great jealousy of any impairment of the power of the States. Soil and climate resulted in the gradual concentra-

tion of slaves in the Southern States. The existence of a law, plainly authorized by the Constitution, under which a fleeing slave might be recovered so inflamed the moral sensitiveness of the Wisconsin Legislature, that they saw in the assumption of jurisdiction to determine finally the validity or invalidity of a law passed by Congress so clear a usurpation of power as to justify "open defiance as a remedy."

The extent to which moral as well as political opinion is colored by local surroundings should warn us against severity of judgment at all times. Men, their creeds and their institutions, must be measured by the standards which were recognized as best at the time.

Contrast Puritan opinion of slavery now with Puritan opinion in the seventeenth century. The first Fugitive Slave Law was that embodied in the articles of the New England Confederacy of 1643.

I am indebted to an address by Judge Hanford, of Washington, for a copy of a letter written in 1682 by one of the most advanced and learned of the leaders of Puritan thought and theology and an early graduate of Harvard College, Dr. Cotton Mather of Massachusetts Bay. The letter is as follows:

September ye 15, 1682.

To ye Aged and Beloved,

Mr. John Higginson:

There is now at sea a ship called the Welcome, which has on board an hundred or more of the heretics and malignants called Quakers, with W. Penn, who is the chief scamp, at the head of them.

The general court has accordingly given secret orders to Master Malachi Huscott, of the brig Porpoise, to waylay the said Welcome, slyly, as near the Cape of Cod as may be; and make captive the said Penn and his ungodly crew, so that the Lord may be glorified, and not mocked on the soil of this new country, with the heathen worship of these people.

Much spoil can be made by selling the whole lot to Barbadoes, where slaves fetch good prices in rum and sugar, and we shall not only do the Lord great service by punishing the wicked, but we shall make great good for his minister and people.

Master Huscott feels hopeful, and I will set down the news when the ship comes back.

Yours in ye bowels of Christ,

COTTON MATHER.

Fortunately "the said Welcome" gave a wide berth to Cape Cod and the piratical crew of Master Huscott, and Wm. Penn and his Quaker colonists of Pennsylvania were saved from the doom of slavery, though sadly to the detriment of the "Lord's service and the great good of his minister and people."

No scheme known to the wit of man is so well adapted to secure the enforcement of the limitations imposed by the Constitution upon Congress and upon the States as that the Supreme Court shall, through its jurisdiction over cases arising under the Constitution or the laws or treaties made by the United States, construe, interpret and apply that Constitution, declaring void every law whether enacted by Congress or by a State Legislature which infringes that instrument.

No less than 1,736 amendments have been proposed to the Constitution since its adoption. Of these only sixteen have commended themselves to the necessary constitutional majority of States.

Of the whole number proposed six only dealt with the question of substituting some other tribunal for the Supreme Court for the settlement of questions of disagreement in respect to the power of the Union and of the States.

Neither of these proposals received any considerable attention, although the scheme has at various times been sup-

ported by the powerful influence of such States as New York, Pennsylvania and Georgia.

My own conclusion is that no tribunal can be wisely substituted for the Supreme Court as the final arbiter of all questions involving the interpretation of the Constitution. I have not always been able to agree with the conclusions of that great tribunal upon constitutional questions. But I have always been able to feel that its conclusions were more likely to be the impartial result of considerations of authority and reason than could be anticipated from any other body of arbiters.

THE OBLIGATION OF THE SOUTH TO THE SUPREME COURT.

We men of the South must not forget that that court threw the great weight of its authority in the scale against some of the most extreme and ruinous of the legislation which characterized the dark days of reconstruction.

In the Slaughter House cases, the 13th and 14th amendments were so construed as to leave the police power of the States unimpaired, and their control over the privileges of citizens of the States, as distinguished from privileges pertaining to citizenship of the United States, in no wise changed by the provision which placed privileges of the latter class under the protection of the Federal government.

In the Civil Rights cases the Act of Congress known as the Civil Rights Bill which undertook, by virtue of the 13th and 14th amendments, to regulate the whole subject of the civil rights of the Negro race, was held unconstitutional as unauthorized by either of those amendments and as an infringement of the proper domain of the States whose power of legislation, so far as it did not discriminate against that race, was unaffected by those amendments.

In the United States *v. Harris*, 92 U. S. 214, the 15th amendment was construed as not conferring the suffrage upon any one, and that its only effect was to invest citizens

of the United States with the constitutional right of exemption from discrimination in the enjoyment of the election franchise on account of race, color, or previous condition of servitude.

In the protection of individual rights of life, liberty and property, so far as those rights are under the protection of the Constitution, that court's solicitude has been most marked.

No thoughtful student of the operations of the human mind can be unmindful of the effect of conditions and environments upon even so abstract a subject as that of constitutional interpretation.

The stress of material interests and of moral or political considerations may unconsciously distort our conceptions of subjects purely historical or intellectual.

This is illustrated by the attitude assumed by the court and legislature of Wisconsin, which was typical of the old-line abolitionists. Moral and political aversion to the institution of slavery was at the root of the utterly indefensible opinion and action of both the court and legislature of that State. Neither was the action at all consistent with the doctrines of interpretation long entertained by the party in opposition to the well-known States' rights views of the then dominant party.

The general attitude dominating Southern opinion toward the authority of the Supreme Court as the final arbiter of all constitutional questions was undoubtedly affected by the conditions which existed in this section of the Union. We were an almost exclusively agricultural people. The institution of slavery had become localized in the Southern States. As an institution it was at once the source of our power and of our weakness.

The feeling that we were dependent upon it and that it was under fire, moral and political, brought about, in conjunction with the agricultural character of our people, an

isolation, a separateness of feeling and action, which tended to alienate us from the Union and to unduly magnify the power and glory of the State.

That we grew by degrees to entertain with practical unanimity the idea that the Union was but a confederacy of sovereign States and not a Nation was the natural result of our isolation as a section and our opinion that the States afforded the surest defense against the growing aggressiveness of antislavery opinion in the North.

The feeling of isolation, of separateness as a section, which grew out of our dependence upon slavery, has well-nigh disappeared as a political force to be reckoned with.

Constitutional opinions in respect to the nature of the Union and the obligations of the Constitution have been undergoing reconsideration in respect to their more extreme views. To stand firmly by the reserved powers of the State is not inconsistent with an equally determined recognition of the supremacy of the Union in respect of all those powers which were delegated to the Union.

We have no longer any special sources of irritation. Without retraction of any opinion we may at least concede that war legislates and is a factor in the interpretation of governmental compacts.

We may and should concede that constitutions, as well as laws of less dignity, get themselves construed.

Questions are sometimes settled wrongfully, but there comes a time when any decision of a question is better than everlasting strife. Slavery has disappeared. With it has vanished every special reason for jealousy of the powers of the Union or its courts.

With it has gone that sense that we as a section of the Union are to limit our interests and affections by the borders of our States.

Our horizon has broadened as we get away from the old isolation.

There has come with it a genuine recognition that the government of the Union is our government and a prime object of our pride and affection.

Thank God for the opportunity for that spontaneous outburst of old-time patriotism which in 1898 flamed out from every hamlet in Dixie's land.

The time has come when we must plan our institutions by greater patterns.

"Be strong-backed, brown-handed, upright as your pines,
By the scale of a hemisphere, shape your designs."

The picture which Prof. Woodrow Wilson draws of the formative state of our institutions when Jackson came to the presidency is no longer exact.

"The country," he says, "was as yet, moreover, neither homogenous nor united. Its elements were being stirred hotly together. A keen and perilous ferment was necessary ere the pure, fine wine of ultimate national principle should be produced."

The country has gone through its ferment. It is united and homogeneous.

I stood four years since at the junction of the Arve and the Rhone on the edge of France. The one, the Rhone, blue, quiet and clear, flows from the calm waters of the beautiful Lake Geneva. The other, the Arve, grey and turbid, comes directly down from the everlasting snows of the mighty Alps. For a time after uniting the two streams seem to flow side by side, traveling within the same banks but each preserving its own characteristics.

Slowly the waters seemed to commingle, the grey becoming bluer and clearer, the blue taking on the grey turbidness of the Arve. Finally there was a complete mingling of the waters of each, and the united rivers constituting the Rhone, neither altogether grey nor blue, flowed in majesty and power to the far Mediterranean. Standing there I could not

but feel that this was symbolic of the homogeneity which had come at last to my own country through the storm and strife, which had finally made us one people, under the starry flag of the Union of our Fathers.

APPENDIX N.

REPORT OF DELEGATION TO AMERICAN BAR ASSOCIATION.

By JOS. HANSELL MERRILL
OF THOMASVILLE.

To the Georgia Bar Association :

True, we have been warned that at a notable day, the last shall be first, but we do not expect it nowadays, and it is perhaps well, therefore, that I explain to those of you who noticed in the list of delegates to the American Bar Association that my name was last, why I am making the report as though it had been first. I shall dispose of Mr. Ellis first, because, following the inverse order, he was next me, and for the additional reason that he can be quickly disposed of in this connection—He did not go. Mr. Justice Lumpkin did go, but he did not stay—and thereby hangs a tale. Having read a good deal of the dangers which the Rocky Mountains held for tenderfeet, I thought it well to have some one to whom I could go for guidance while there, and so armed myself with a letter from our distinguished brother, Washington Dessau, to the then recently retired governor of Colorado, the Hon. Chas. S. Thomas, a former Georgian and one of the prominent and successful lawyers of that State, as well as a most charming gentleman. Going out with this several days in advance of the meeting of the Association, I hoped with its help to be in a position to extend a cordial hand and cast a sheltering arm around any lonesome or timid looking brethren who might show up later. Imagine my sur-

prise then on entering the dining-room of the Brown Palace Hotel the next morning after my arrival in Denver, to see the judge seated at the best table in company with his good lady and niece, looking as much at home as ever a man did at an inn. At the first convenient opportunity I proposed to celebrate the pleasure of our meeting by seeing what the hotel, afforded in the way of a mint julep, when I was met by such a positive refusal that I did not get up the courage to pursue that line of investigation further till several days later, when, in the company of a very dear old friend from Savannah and a new acquaintance from New York, I found from the difficulty I had a few moments later getting the right chair and the real glass of water, etc., at the table, that a mint julep in the Rocky Mountains was as much more potent than in Georgia, as the Rocky Mountains are larger than the Georgia mountains; I learned then that my fellow-delegate knew as much more about where to indulge in certain beverages than I did, as he does about certain legal propositions we have discussed here at home.

He was more sociable about going with me to see the ex-governor, but the result of that visit was his desertion of me and a large part of the meeting of the Association. The ex-governor gave him a pass good for three months over railways reaching nearly every point of interest in the State, for himself and wife and niece. As I was given only a trip pass to one or two points of interest, I was clearly outclassed. True, the judge was very kindly in his manner when saying good-bye to me, and very generously turned over the remaining sessions of the Association to me, but he left me, going himself with a quarterly pass in his pocket, while my hope of seeing the State of Colorado was limited to a single trip pass and an excursion train.

Having established my right to make this report, I shall proceed to make it according to my own notions, and I shall insist upon my fellow-delegate's acquiescing in it, as I have to in his adverse decisions of my cases.

As illustrative of the necessity of having more than one dele-

gate attend the meetings of the American Bar Association if you would get a reliable report, I must tell you of the different impressions made on two Georgians by a distinguished justice of a great State. One of them had made his acquaintance, and telling me of him afterward, said, "He is one of the finest looking men I ever saw. He looks a chief justice every inch of him, an ideal man in appearance for such a place." Having had the honor myself later, I pointed him out to that other Georgian, repeating the first one's expression of admiration, when he exclaimed, "Heavens! he looks like a head-waiter."

As a preliminary to the meeting of the Association, it was necessary to register in the Secretary's room and procure tickets for seats in the theater where the meetings were to be held. While waiting for the Secretary to come in, I got into trouble. The room was full of members waiting like myself for the Secretary, when a gentleman sitting near me opened a conversation by asking a question which required no originality and little memory there, "Where are you from?" Soon I had told him about all the other Georgians there, more than they knew of themselves probably, and in answer to other inquiries, had delivered myself learnedly about certain problems as to uniformity of laws in the States about divorces, etc., when it occurred to me I might ask my friend's name, and learned that he was not a member of the Association but a Denver newspaper reporter. I felt a bit uneasy all the afternoon, but slept it off, and in the morning had forgotten my apprehension, when I opened the paper at breakfast and found my own name given as authority for a dissertation on the honor and glory of the judiciary of the State, represented by the chairman of the Georgia delegation, and myself quoted at length about the advisability of having uniform laws among the States on various subjects—some of which I may have said, but much I did not. It attracted the attention it deserved—none at all—so I was not arraigned and discharged from membership.

At the opening session we were delightfully welcomed by Mr.

Platt Rogers, one of Denver's prominent lawyers, but he said, "I must add that while we are prepared to welcome the coming, we are equally prepared to speed the parting guests. We have our full complement of attorneys in this State already." After that speech every one of us came back home; we did not even consider the advisability of remaining permanently, and whether or not that be the sole reason, I believe we are all on the Kansas side, while this suit between it and Colorado is going on about which shall have the water of the Arkansas river.

The address of President Wetmore was able and scholarly. By the constitution of the Association, it is the duty of the President to communicate in his annual address the most noteworthy changes in Statute law on points of general interest made in the several States and by Congress during the preceding year. This requirement is a matter of interest, though we do not feel any disposition to propose its adoption by this Association, preferring the liberty allowed the President under our constitution of choosing his own subject. We shall not attempt to give any résumé of the papers read at the meeting, for, adopting the idea of the Jewish historian, who said, "Now the rest of the acts of Jeroboam and all that he did, are they not written in the book of the Chronicles of the Kings of Israel?" we say, "Now are not all the words of President Wetmore and others written in the book of the Chronicles of the American Bar Association?"

Of the other addresses, that of Mr. Henry D. Estabrook of Chicago, on Alexander Hamilton as a Lawyer, was especially enjoyable, on account of its terse, vigorous style. After quoting a letter of Hamilton's which sounds as if written by a man of at least forty, he says: "At this time, 1769, Alexander Hamilton was, you perceive, a man aged twelve. Poor little chap." I am sure all of you would enjoy reading this paper.

You have no doubt all already read the very forcible and able criticism of the Supreme Court, by Congressman Littlefield, about the Insular cases, which caused Mr. Adolph Moses, of

Chicago, to enter his protest and throw his protecting arm about the court, and that caused a Texan to ridicule Mr. Moses in his speech at the banquet, which brought forth hisses never before known to the Association. And all about those little islands away off yonder!

Mr. Platt Rogers, of Denver, gave us a very interesting paper on the great question of irrigation, which has become intensely practical since he and our ex-Georgian, Hon. Charles S. Thomas, are representing Colorado in the suit Kansas has brought against it in the United States Supreme Court about the Arkansas river.

The paper by Mr. Richard C. Dale, of Philadelphia, on "Implied Limitations upon the Exercise of the Legislative Power," is a very valuable treatise on this subject—interesting to all of us; and since Georgia gold mines have become more active factors of late, the "Evolution of Mining Law," treated of by Mr. Charles J. Hughes, of Denver, will prove interesting.

John Marshall Day occupied a good deal of attention, and the matter of education for admission to the bar was very exhaustively treated by the Section of Legal Education. The consensus of opinion was to make the requirements greater—raise the standard of the profession.

Since a lady carried off the honors of our last session, it occurs to us that the paper by Mr. William P. Rogers on the question, "Is Law a Field for Woman's Work?" may prove very interesting reading. He says: "More than three hundred women have been admitted to practice in the United States in the last twenty-five years," and that during the past year there were two hundred women studying in the law schools. "So the question of women in the law is neither forced nor theoretical. It is both real and practical."

The plan to have the meeting next year at St. Louis during the exposition will of course be changed, since the postponement of that, but it is pretty certain to be held there when the exposition is held. The idea is to have there then a universal congress of lawyers to be composed as follows:

1. Lawyers and jurists from every nation of the world.
2. Teachers of law and persons learned in special branches of jurisprudence.
3. Persons learned in ancient law, including teachers of the history of law, and students of the laws of peoples and nations now extinct.

This sounds attractive no doubt to all of us.

The symposiums that we have and which I think constitute generally the pleasantest feature of our meetings seem to be unknown to the American Bar Association.

And this reminds me that I found true what one of my friends told me I would, that attending a meeting of the American Bar Association would heighten my ideas of the Georgia Bar Association. I did not see where they are ahead of us except in numbers.

I have heard a member of the Association quoted as saying that he did not care to cultivate the American Bar Association, as it was made up of patent lawyers and law school teachers. The patent lawyer who presided at the last meeting is certainly an honor to the profession. As a presiding officer he was efficient and pleasant: in his address to the Association, clear and forceful; as an after-dinner speaker at the banquet he was most felicitously entertaining.

The man who was last year elected chairman of the Section of Legal Education, one of the instructors at Cornell, is a man of as charming personality as our best Southern civilization produces. And the crowd generally seemed to be all-round good fellows, country lawyers like ourselves, engaged in the general practice, and at the meeting to have a good time, incidentally, possibly with some, to let others know where they are at, in the event it was desired to have any business attended to in their neighborhood. There were undoubtedly some there whose chief purpose was to advertise themselves. Some of them had their pictures in every paper in the city. Let me say to the honor of the Georgia contingent, that they all were invited,

urged, to furnish their photographs to the press; and none of them did so. Now I will not assert that this was altogether modesty. It may have been due partly to the fact that they had no photographs with them.

The meeting was the largest in the history of the Association. At it 225 new members were elected, of whom 31 were from Nebraska and 80 were from Colorado; so much for having the meeting at a new place. Why not get them down here to Georgia some time, and make it easy for the lawyers of Georgia and neighboring States to attend and join? The membership from the States of this section is very small compared with others. The Southern members are given a good showing about everything. Georgia has furnished one president of the Association, General Alexander R. Lawton of Savannah, in 1882-3, and the president for this year, Judge U. M. Rose of Little Rock, Ark., is a typical Southern gentleman of the old school, one of the kingly, kindly sort, whom to know is to love. Admirers of his type should all attend the approaching session in Saratoga to make the meeting over which he shall preside a source of pride and pleasure to him, and one long to be remembered in the annals of the Association. Let us all go.

The report of the proceedings of the Association is worth the cost of membership—\$5 a year: and as I am provincial enough to think Georgians the best people in the world, I am desirous, for the good of the American Bar Association, that many Georgians should be members of it. So I am disposed to urge you all to join.

The great distinguishing characteristic of the last meeting of the American Bar Association was the magnificent entertainment by the Colorado lawyers. It was as grand as the mountains on which it was conceived. Think of two long trains of Pullman cars filled with members of the Association and the ladies of their families carried for four days over those mountains to all the principal points of interest in the State—Cripple Creek, Leadville, Glenwood Springs, Salida, Marshall Pass, The

Royal Gorge, Pueblo, Colorado Springs and Pike's Peak—a commissary car on each train provided with everything the palate of man or woman could desire between meals, and our train in charge of that prince of good fellows, W. H. Bryant, of the Denver bar; think of this, I say, and understand why we shall always love Colorado's mountains and her men—those best of men—her lawyers.

In the Royal Gorge the trains were stopped, and there at the hanging bridge, with the Arkansas river beneath us and the perpendicular walls of the Gorge rising 2,000 feet above us, a meeting was held and the following minutes adopted:

"To the Colorado Bar Association, and the Denver Bar Association."

"The members and delegates present at the Twenty-fourth Annual Meeting of the American Bar Association, who, with their families, have enjoyed your unbounded hospitality, cannot leave your State without some expression of the appreciation in which they hold your courtesy—cordial, unvarying and resourceful as it has been.

"In the Canon of the Arkansas, therefore, by the Royal Gorge, with one accord and moved by a common desire, we record the delight with which we have enjoyed the trip, for four days, over the mountains and through the valleys of Colorado, made possible by your unequalled hospitality and attended by a regard for our comfort and provision for our pleasure, as unrivaled in its extent as it has been agreeable in the manner of its delightful and continued operation.

"The grandeur of Colorado's mountains, the magnificence of her canons, the beauty of her fertile valleys, the unlimited richness with which God has endowed her in material wealth, we shall never forget; but with it all, and above it all, the friendships we have made with your people and the courtesy we have received at your hands will abide with us always, a constant source of delightful recollection and a most brilliant event in the history of our Association."

APPENDIX O.

THE EFFECT WHICH UNITED STATES COURTS WILL GIVE TO THE DECISIONS OF STATE COURTS.

PAPER BY
ROBERT C. ALSTON
OF THE ATLANTA BAR.

Mr. President and Gentlemen of the Georgia Bar Association:

The subject of this paper, "The Effect which United States Courts will Give to the Decisions of State Courts," should be of interest to every person who has legal remedies to enforce or legal rights to protect, for the rights and protection which he finds in the courts are not always the same.

To investigate this question leads us first to consider the United States Judiciary Act of 1789, which embodies much of the wisdom and patriotism which inspired the Constitution. One of the sections of this act, embodied in section 721 of the Revised Statutes of the United States, provides as follows: "The laws of the several States, except where the Constitution, treaties and statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law in courts of the United States in cases where they apply."

It is first to be noticed that these laws of the several States do not apply in equity, admiralty or in criminal proceedings, for by the terms of the act they are limited to trials at common law.

The key to the situation is found in the construction of the words "laws of the several States." For, while these laws are to be rules of decisions to the United States Courts in trials at common law, the courts of the United States are none the less independent tribunals with the right to find for themselves what these laws are.

The adopted construction of this term is the one fixed by Judge Story in *Swift v. Tyson* (16 Peters, 110), where he says: "It will hardly be contended that decisions of courts constitute laws. They are, at most, only evidence of what the laws are, and are not of themselves laws. They are often reexamined, reversed, and qualified by the courts themselves whenever they are found to be either defective, ill-founded or otherwise incorrect."

Yet, as to this, there has been conflict in the Federal judiciary, for it is well settled that the United States as such has no common law, and yet the main body of the rights of the people of the United States rests upon and is governed by the principles derived from the common law of the different States. (*Wheaton v. Peters*, 8 Peters, 591.)

Mr. Justice Field took this doctrine as authority upon which to base a dissenting opinion in the case of *Railroad Co. v. Baugh* (149 U. S. 368), which argues that, as the United States has no common law, its courts should, as to matters of common law, content themselves with administering the common law as they find it already established in the various States.

Judge Caldwell of the Eighth Circuit has well stated in *Hartford Fire Ins. Co. v. Chicago Ry. Co.* (70 F. R. 201): "The general statement has been made that the Federal courts are not bound to follow the decisions of State courts on questions of general jurisprudence, when unaffected by State legislation, but no exact enumeration has ever been made, or ever can be made, of the questions that come within this general definition. Moreover, the decisions of

the Supreme Court relating to the subject are not uniform or harmonious."

Recognizing the truth of the statement and its force, coming as it does from one of the ablest of American jurists, I can only hope in this paper to direct your attention to some of the things which a study of the subject discloses, without even attempting to be exhaustive. It is believed that it may be said that the United States Courts will treat as binding decisions of the Supreme Court of a State construing the Constitution and statutes of that State, except in the following instances:

1. When the State statute is a mere enactment of the common law, they will then "endeavor to lean towards an agreement of views with the State court, if the question seems balanced with doubt."

(*Clark v. Bever*, 139 U. S. 96-117.)

When, however, the State courts modify the common law by statute the United States courts are bound by the modification.

(*R. R. v. Hogan*, 63 F. R. 105.)

2. When the contract affected by the construction was entered into before the State court had construed the statute.

(*Pleasant Township v. Aetna Life Ins. Co.*, 138 U. S. 67-72.)

(*Speer v. Board of Co. Com'rs*, 88 F. R. 749-760.)

(*Enfield v. Jordan*, 119 U. S. 680.)

Unless the decisions so subsequently rendered constitute a rule of property.

(*Warburton v. White*, 176 U. S. 484-496.)

3. Where contracts have been entered into on the faith of existing judicial construction of State statutes, the courts of the United States will not regard themselves as under any duty to conform to later decisions, reversing earlier opinions, upon the faith of which citizens of other States have acquired rights or assumed liabilities.

(*Douglass v. Pike Co.*, 101 U. S. 677.)

4. Where the State court decision is "balanced with doubt."

(Freeport Water Co. v. Freeport City, 180 U. S. 587-597.)

5. The United States courts except from the rule of conclusiveness of construction given by the courts of the States to State legislation and to State constitutions cases where that court is called upon to interpret the contracts of States, and it will not follow the construction of the Supreme Court of a State in such a matter when it entertains a different opinion.

(Bank v. Skelly, 1 Block 438.)

(Passaix & H. River Bridge Profeit v. Hoboken L. & T Co., 1 Wheat. 116.)

6. When the question involved in the construction of a State statute practically affects those remedies of creditors which are protected by the Constitution, courts of the United States will exercise an independent judgment as to the meaning of such statutes, and will not be bound by the decisions of the State courts.

(Butz v. Muscatine, 8 Wall. 575.)

This principle is but another way of asserting that no State shall pass any law which impairs the obligation of a contract, and therefore becomes a federal question, upon which, of course, the United States courts will exercise independent jurisdiction. The above case arose in the construction of a State statute, which undertook to take away from the creditors of a municipal corporation the right to have a tax levied in their favor after judgment upon their causes of action, which statute was in existence at the time the obligation was incurred, but which the lower court held to have been repealed by subsequent enactment, and which was treated by the United States Supreme Court as though an effort had been made to repeal it.

7. The United States courts will exercise an independent jurisdiction as to all curative statutes.

(Bolles v. Brimfield, 120 U. S. 763, 764.)

This case arose from the issuing of bonds by the town of Brimfield, Ill., in pursuance of an unauthorized election. The legislature afterwards declared the election to be legal. The State courts held this act inoperative because retroactive. The United States courts held to the contrary.

It will be noticed that the judicial and rather unusual phrase, "balanced with doubt," plays a double part in the determination of the judicial minds. According to the case of *Clark v. Bever*, 139 U. S. 96-117, "if the question is balanced with doubt," the United States courts will lean towards the views of the State court; according to the case of *Freeport Water Co. v. Freeport City*, 180 U. S. 587-597, the existence of this condition, as applied to the decision of the State court, will require the United States courts to exercise independent jurisdiction. Thus we see that the same conditions sometimes lead to different conclusions.

THE SUPREME COURT OF GEORGIA AND THE UNITED STATES COURTS.

The State of Georgia has now at least two municipal governments under federal restraining orders, because of the difference of construction given to the section of the Constitution which provides that no municipality shall incur any new debt except for a temporary loan or loans to supply casual deficiencies of revenue, not to exceed one-fifth of one per centum of the assessed value of taxable property therein, without the assent of two-thirds of the qualified voters.

(Code, section 5893. Constitution.)

The Supreme Court of this State held, in the case of *Dawson v. Waterworks Company*, 106 Ga. 696, that a contract on the credit of the city for a supply of water for a longer period than one year is void, as contravening the above section of the Constitution of the State of Georgia.

The United States Circuit Court apparently differs from

this construction, and at the suit of the trustees for the bondholders of the Dawson Water Co. has enjoined the city of Dawson from violating the contract referred to in the above suit; and, pending a final hearing and report of the Master the city remains under injunction.

One of the principal reasons assigned by the United States Court for refusing to acknowledge itself bound by the above-stated Supreme Court decision, and the ones rendered by our Supreme Court in harmony therewith, was the special concurrence of the Chief Justice, who felt himself bound only because other courts had bound him, frankly avowing that if it were an original question he would hold that the making of such a contract did not constitute an indebtedness beyond the year for which it was created.

The city of Cartersville is under a like injunction, arising from substantially the same conditions. The United States Circuit Court bases its decision upon the famous case of *Walla Walla v. Walla Walla Water Co.*, 172 U. S. 1. In this case the city of Walla Walla was restricted as to its indebtedness to fifty thousand dollars. The city executed a contract by which it bound itself to take water from this company for a period of years, and agreed to pay a stipulated sum for annual water rentals, which in the aggregate exceeded the sum of the maximum debt which the city was allowed to incur. The court held that this did not create an indebtedness for the aggregate amount of the contract price; that there was a vast difference between a debt to be paid in the future and an agreement to make certain payments after certain services had been performed.

It must be admitted that much the stronger position in this construction seems to be with the special concurrence of the Chief Justice of Georgia in the Dawson case and in the reasoning of the Supreme Court of the United States.

Georgia decisions have been recently brought again into apparent conflict with the federal decisions in a very interesting question.

The Brunswick State Bank failed, and the Brunswick Terminal Co. sought to enforce against the National Bank of Baltimore the charter liability, that bank having held certain shares of the Brunswick Bank as collateral security, entry of which was made upon the books of the Brunswick bank. A plea of the statute of limitation was filed by the Baltimore bank, and the United States Circuit Court held that the limitations of Maryland and not Georgia applied, and, besides, if the Georgia limitation did apply, the Georgia court was in conflict as to what was the period of limitation on a statutory action, and the United States court undertook to say that it was three years in Georgia, although the latest utterance of our court and a code section placed it at twenty years. The Circuit Court of Appeals did not adhere to this ruling, but adopted the Georgia Code section and the later decisions, and sent the case back.

Before this came on for hearing on its merits in the United States Circuit Court, the Supreme Court of this State had passed on the case of *Chatham Bank v. Brobston*, 99 Ga. 801, in which the case of *Brobston v. Downing*, 99 Ga. 505, and other like cases were reviewed and affirmed, but with a dissent from an acting Justice and a statement from the court that, as this law had been changed by an act of the legislature, it would not now go into the question at this time, but would treat the matter as open should a like case arise. The Federal Court evidently well thought that Georgia was without a settled rule of construction as to liability under State bank charters, and did not agree with the conclusions arrived at by her Supreme Court.

(See *Brunswick Terminal Co. v. National Bank of Baltimore*, 88 F. R. 607.)

(See *Brunswick Terminal Co. v. National Bank of Baltimore*, 99 F. R. 635.)

(See *Brunswick Terminal Co. v. National Bank of Baltimore*, 112 F. R. 812.)

The United States courts hold that building and loan associations are controlled by the general law, as to which the United States courts have built up a line of decisions for themselves. And as to this the two courts are in conflict in Georgia, where, under the rule of *Cook v. Equitable Building and Loan Association* (104 Ga. 842), as followed in *Cashen v. Southern Mutual Building and Loan Association* (not yet published), the Georgia courts hold full paid stock in a building and loan association to be "an anomaly," and to be a debt ahead of serial stock, while the United States courts have held in *Alexander v. Southern Home Building and Loan Association* (110 F. R.), and in every other case where the question has arisen, exactly to the contrary, with the result that the two courts are administering building and loan associations side by side in Georgia, and are giving diametrically different results.

Nor will the United States Court accept as binding the decision of the State courts on questions of the duties of the master to the servant as to appliances and machinery. As to this question, there is a divergence rather than a conflict in Georgia. The United States courts are considered more favorable to the servant in the construction of this law.

(Compare *Tex. & P. Ry. Co. v. Barrett*, 166 U. S. 617; *Totten v. Pa. Ry. Co.*, 11 F. R. 564; *Robertson v. Cornelison*, 34 F. R. 716, with *R. R. Co. v. Ray*, 70 Ga. 674-678; *R. R. Co. v. Perkins*, 88 Ga. 1-8; *Ga. R. R. Co. v. Kenney*, 58 Ga. 485-490.)

The two courts differ as to the law governing injuries at railroad crossings. The United States courts hold that one who goes upon a railroad track without looking to see if a train is approaching, when his view is unobstructed, is, as a matter of law, guilty of a want of ordinary care, which precludes his recovery.

(See *R. R. Co. v. Mosley*, 12 C. C. A. 601; *R. R. Co. v. Houston*, 95 U. S. 697; *Schofield v. R. R. Co.*, 114 U. S. 615.)

While the Supreme of Georgia holds that the question of negligence is a question for the jury.

(*Central R. R. v. Thompson*, 76 Ga. 770.)

IN CASE OF INCONSISTENCY IN THE DECISIONS OF A STATE'S COURTS.

The United States courts will follow the latest settled adjudications in preference to the earlier ones. But they will not necessarily follow the latest decisions of a State court in case of conflict, where, upon the faith of State decisions affirming the validity of contracts made, or bonds issued under the same statute before the prior cases were overruled, such bonds or contracts are held to be valid upon the principle that the holder of such bonds or contracts upon purchasing the same were entitled to rely upon the prior decisions as settling the law of the State.

(*Wade v. Travis Co.*, 174 U. S. 499.)

PERSUASIVE AUTHORITY.

All the decisions of the United States courts hold that the decisions of the State courts are "highly persuasive" upon the United States courts, even on propositions of general law; this, because of the desire to have harmony of rules between the two courts.

(*Burgess v. Seligman*, 107 U. S. 20.)

AS TO RULES OF PROPERTY.

The United States courts will follow, whenever possible, the decisions of the State courts, when these decisions establish a rule of property. This rule obtains even though the decisions of the State court, from which the rule of property arises, may have been for the first time announced subsequent to the period when the particular contract was entered into.

It may be taken as certainly fixed that, where the decisions of a State have established, as to real estate, a rule of property, the United States courts will always hold themselves bound thereby, though in doing so they pass upon propositions of general law as to which, as an original proposition, there might have been a difference of opinion.

(*Burgess v. Seligman*, 107 U. S. 20.)

(*Lowndes v. Huntington*, 153 U. S. 1-19.)

(*Buford v. Kerr*, 90 F. R. 513-514.)

But while this is true, and it is also true that where the State courts have given a certain meaning to certain words in deeds or wills of real estate, that construction will be followed by the courts of the United States in determining titles to land within the State; yet, the United States courts will not hold themselves bound by the construction placed upon these words by a single State court decision.

United States courts will follow the local law, as evidenced by decisions of the several States in reference to chattel mortgages, although chattel mortgages are in many respects dependent for their construction upon the general commercial law.

Judge Lurton, speaking for the Court of Appeals for the Sixth Circuit, draws this distinction in an able decision rendered in the case of *Wilson v. Perrin* (62 F. R. 629).

Following the case of *Etheridge v. Sperry* (139 U. S. 276), the court says: "The matter is not one of purely general commercial law; while chattel mortgages are instruments of general use, each State has a right to determine for itself under what circumstances they may be executed, the extent of the right conferred thereby, and the condition of their validity."

SOME OF THE QUESTIONS ON WHICH THE UNITED STATES COURTS REFUSE TO FOLLOW THE STATE COURTS, FOR THE REASON THAT THEY ARE BOUND TO EXERCISE INDEPENDENT JURISDICTION, ARE AS FOLLOWS :

Building and loan associations, as hereinbefore shown.

As to matters relating to the law of insurance.

(Foster's Federal Proc., pp. 557, 375.)

As to all matters governed by the law merchant, the United States courts will exercise independent jurisdiction.

(Burgess v. Seligman, 107 U. S. 20.)

AS TO COMMON CARRIERS.

The United States courts will exercise independent jurisdiction as to the liability of common carriers in all matters in the absence of statute.

(R. R. Co. v. Lockwood, 17 Wall. 357.)

(R. R. Co. v. Prentice, 147 U. S. 107.)

The law of fellow-servants is independently administered by the United States courts.

(Balt. R. R. Co. v. Baugh, 149 U. S. 372, 373.)

(Hough v. R. R., 100 U. S. 213.)

(R. R. Co. v. Ross, 112 U. S. 377.)

The law as to the duties of the master to furnish safe appliances to the servant is administered independently.

(See citation hereinbefore.)

In States which hold that a common carrier may stipulate for exemption from any liability for its own negligence, the United States courts will not follow such decisions, but will decide to the contrary.

(Liverpool Co. v. Phenix Co., 129 U. S. 397-443.)

(Chicago & Milwaukee R. R. Co. v. Solan, 169 U. S. 133-136.)

As to injuries at railroad crossings, the United States courts exercise independent jurisdiction.

As to whether or not a receipt issued by a railroad com-

pany for the transportation of cattle to be carried beyond its own line is a through contract, the Supreme Court declines to follow the State court decisions.

(*Myrick v. R. R. Co.*, 107 U. S. 102.)

It may be said that as to all matters relating to common carriers, which are not regulated by statute, the United States courts will exercise independent jurisdiction.

AS TO TELEGRAPH COMPANIES.

The decisions of State courts as to the validity of contracts exempting telegraph companies from liability for mistakes, delays or non-delivery in the transmission of messages is one of general law, and will not be binding on Federal courts.

(*W. U. Tel. Co. v. Cook*, 61 F. R. 624.)

AS TO LANDOWNERS.

The liability of a landowner for dangerous and unguarded excavations is controlled by general law and not by State decisions.

(*Chicago v. Robbins*, 3 Black. 418.)

The contrary is intimated in *Detroit v. Osborne* (135 U. S. 492) so far as the same affects municipal corporations, on the idea that States have a right to define the liabilities of a local government corporation.

It will be seen from what has been said that a Federal court may at one time be obliged to render a decision one way on a given state of facts, not following the State court, because the decision, as rendered by the State court, was rendered after the contract under construction was entered into, and the same Federal court may then be obliged to decide to the contrary, agreeing with the State court in the construction of the contract, which was entered into after the rendition of the State court decision construing the statute on which it was based. Such was the occurrence in the case of *Central Trust Co. of New York v. the Citizens Railway Co.*

(82 F. R. 5), a cause in which the late ex-President Benj. Harrison appeared for the complainants.

The United States courts sometimes find themselves bound by State decisions as to the result of certain acts or omissions, and may then entirely differ from the State court as to the consequences which flow therefrom, for instance, in the case of *Pana v. Bowler* (107 U. S. 529-541) the United States Supreme Court felt itself bound by the decisions of the Supreme Court of Illinois, that an election to determine whether or not a series of bonds to be issued was void, but it differed entirely from the decision of that court as to the effect of that fact upon a *bona fide* holder of those bonds, holding that to be a subject governed by the law merchant.

EVIDENCE.

By section (858) of the Revised Statutes of the United States, the laws of a State in which a United States Court of Equity is held are made the rules of decision as to the competency of witnesses, in the courts of the United States in trials of common law and in equity and in admiralty, providing, however, that no witness shall be excluded on account of color, or in any civil action, because he is a party to or interested in the issue tried, and also providing that in any actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transaction with or statement by the testator, intestate or ward, unless called to testify thereto by the opposite party, or required to testify thereto by the court.

It will be noticed that this does not include criminal cases, and that, therefore, while the defendant simply makes an unsworn statement in Georgia, he is examined and cross-examined after being sworn as a witness in the United States courts.

It is further noticed that this applies only by its terms to

competency of witnesses, and in the cases against the Southern Railway Co., tried in the United States Circuit Court in the Northern District of Georgia, known as the Camp creek cases, a different rule was applied as to the cross-examination of witnesses, the United States courts restricting the examination only as to such matters about which the witnesses had been questioned in a direct examination, which makes a different rule from that followed in the State courts.

UNITED STATES COURTS WILL NOT UNNECESSARILY CONSTRUE LOCAL
STATUTES BEFORE THE SAME HAVE BEEN PASSED UPON
BY THE STATE COURTS.

The United States courts are very loath to anticipate the State courts in deciding whether or not a given statute violates the Constitution of the State which enacts it. They prefer to leave the State's policy entirely to the State, and will not consider the question unless the record imperatively demands it.

(*Pelton v. Bank*, 101 U. S. 143.)

This authority will be exercised to the extent of declaring a State statute unconstitutional only in very clear cases.

(*Livingston v. Darlington*, 101 U. S. 407.)

So thoroughly will the United States courts hold to the rule of upholding the State courts in their construction of the statutes of their respective States, that where two States have enacted the same law and differ as to the construction thereof, the United States Supreme Court will follow the construction of each State in reference to its own law, though to do so may require a different construction of the same words in each instance.

(*Shelby v. Guy*, 11 Wheat. 361.)

(*Randolph v. Quinick Co.*, 135 U. S. 457.)

(*Bauserman v. Blunt*, 147 U. S. 647.)

So, too, whenever a State drafts a statute from another State, which has given to it a settled meaning, but the adopt-

ing State differs from the construction given by the first State, the United States courts will follow each State's construction.

(*Railway Co. v. Stahley*, 62 F. R. 363.)

But while this is true, and the United States courts are loath to make a rule of decision as to State statutes, yet when they must decide as to the effect or construction of a State statute, they will not recede from that construction because the State Supreme Court subsequently renders a decision upon the same subject differing from the United States court's decision.

(*Pease v. Peck*, 18 How. 598.)

One of the ablest decisions bearing upon the subject of this paper is that of *Bartholomew v. City of Austin* (85 F. R. 359), rendered by the Honorable The Circuit Court of Appeals for this circuit, Judge Don A. Pardee writing the opinion. The strong, rugged justice that always pervades his decisions, whether on the circuit or in the Court of Appeals, adds great weight to the principles involved.

CONFLICT OF LAW.

The Federal courts exercise independent jurisdiction in cases of conflict of law and apply their own rules in determining by what law the case should be controlled.

Following this doctrine, the United States courts in Texas held that the contracts of the Southern Home Building and Loan Association were Georgia contracts, and therefore not usurious, while the State held them to be Texas contracts, and therefore usurious—the difference amounting to more than one hundred thousand dollars to the stockholders of the association.

AS TO BONDS AND CONTRACTS ISSUED OR ENTERED INTO BASED ON A
STATE STATUTE PRIOR TO THE CONSTRUCTION OF
THAT STATUTE BY A STATE COURT.

Amongst the most beneficial results of the difference of the courts of the State and of the United States are the de-

cisions of the latter courts in relation to bonds which have been issued by cities or counties, or other governmental bodies, which have been declared void for irregularity in the passage of the act authorizing the same, or for other cause, and contracts which have been entered into on the faith of an existing construction of the State statute or before the State courts have placed a construction upon the statutes.

The United States courts have constantly and firmly held that they would not be bound by such State court decisions as against the holders of these bonds who had acquired them before the rendition of such decisions.

In the case of *Folsom v. Ninety-six Township* (159 U. S. 611-627), a district in South Carolina issued bonds and sold them, and the Supreme Court of the State held the bonds to be void, because the act of the legislature authorizing the issue was unconstitutional. The United States Supreme Court refused to follow this decision, at the suit of a bondholder who had become such before the rendition of the aforementioned State court decision.

(See also *Pleasant Township v. Aetna Ins. Co.*, 138 U. S. 67-72.)

This rule is followed so closely that the United States courts will not be bound by a State court's construction of a local statute for the first time, after the same has been construed by the Circuit Court of the United States. Nor will the United States Circuit Court reverse its decision on a bill of review under such circumstances.

(*Pease v. Peck*, 18 How. 598.)

(*Roberts v. Bowles*, 101 U. S. 119.)

(*King v. Invest. Co.*, 28 F. R. 33.)

Judge Newman of the Northern District of Georgia, acting on practically this doctrine in the case of *Solomon v. The American Building & Loan Association*, declined to follow the rulings of the State Supreme Court, as announced in *Caspen v. The Southern Mutual Building and Loan Asso-*

ciation, he having rendered a decision previous to the ruling of the Supreme Court of Georgia holding differently from the rule made by that decision of the Supreme Court of Georgia.

Gentlemen, it must have been somewhere about the year 1800 that Aaron Burr gave his famous definition of law: "Law is that which is forcibly asserted and plausibly maintained," which is now quoted as the embodiment of infamy. When we consider that eminent courts, composed of distinguished and honorable men, study propositions of general law with the single purpose of finding the truth, and yet arrive at exactly opposite results; that, in spite of well-guarded rules, the courts frequently find themselves within the bounds of the exceptions and come to inevitable conflict; and then weigh the times of this utterance, and find that "the rope of sand"—the Articles of Confederacy—stretched to the very limit of the centripetal power of patriotism, has melted into a constitution, and the plain terms of the constitution receive conflicting constructions, with States in conflict with the Federal Government, and a construction of the constitution announced by the Supreme Court of the United States which permitted a court of the United States to render judgment against a State and enforce execution issued thereon, and then to see that decision met with legislative enactment, by which the State declares the death-penalty to any officer who will levy the execution, and I am sure you will at least ponder awhile before concluding that this utterance is final proof of absolute abandonment of character.

A study of the opportunities for conflict of decision between the courts of the United States and of the several States, and of the manner in which these conflicts have been avoided, and of the constant leaning of the courts towards harmony of decision, convinces us of the patriotism of those into whose hands have fallen the judicial destinies of our dual governmental system. We must be convinced that but for a broad-minded conception of the rights conferred under

our constitution and a spirit of patriotism with which the construction and the exercise of these rights have been approached, the storm-cloud would have gathered more than once and have swept us past the lighthouse of statesmanship.

APPENDIX P.

REPORT OF COMMITTEE ON LEGAL ETHICS.

Three extended reports on this subject appear in the printed proceedings of this Association. The first was made at the meeting held in Savannah in 1889; the second, at the meeting held at Warm Springs in 1896; and the third, at the meeting held at the same place in 1901. Besides these reports, in which the subject is fully discussed, there have been other reports of shorter length, and many admirable discussions involving the general subject.

We have, therefore, had on this theme "line upon line, and precept upon precept."

But the preaching of professional ethics has as good reasons for its continuance as the preaching of the gospel. The fact that sinners exist, increase, and prosper in the churches as well as out of them constitutes no reason why churches should be abolished, preachers dismissed, and the book of the gospel closed.

No attempt, however, will be made here to restate the rules of professional ethics. They are stated with admirable clearness and with all the sanction of a statute in the Civil Code of Georgia, and partly in the Penal Code. Indeed, it is not pretended that any lawyer in Georgia is ignorant on the subject. The trouble is not ignorance.

Ethics is said to be the science of conduct. It is an attempt to formulate rules of right conduct as evolved from experience in the lives of men. It sets up ideals of conduct, rising above, but based upon actual human life and nature, and attempts to give those ideals definite place and shape. The conscience is the monitor or censor of conduct. Any code of ethics, to be effective, must be approved by the enlightened consciences of those to be ruled by it.

The conscience is susceptible of cultivation. It is largely formed

by environment, either mental or social. No man lives to himself; he lives as a member of society, and the society of which he is a member may be large or small. The social unit or world in which a man lives determines largely the character of his conscience. A man who lived in the rude society of the middle ages could kill his fellow with no rebuke or protest from his conscience. A man who lived two hundred years ago could burn a fellow man for witchcraft or hang him for theft with a clear conscience. The sages of the Sanhedrin who forced the crucifixion doubtless followed the dictates of the conscience of the social unit to which they belonged. The conscience of the social unit may change, or the individual by changing from one social unit to another, may hear new voices from his conscience.

The gambler may be said to have his ethics, or rules of conduct, or may make certain applications of ethical rules to his profession. He may be in his sphere an honorable gambler or a dishonorable gambler. When he gets out of that sphere, his conscience becomes impressed with the conscience of his new surroundings, and gradually he adapts himself; and what his conscience once approved, or failed to notice, it now condemns.

Even newsboys and bootblacks have their codes of business conduct; and almost every class of workers the world over have rules governing with more or less strictness their professional or business relations, which rules are affected from time to time by changes in social life. So it is with the legal profession, and the status of professional ethics amid the changes of contemporary life is a vital question with lawyers.

The idea of justice antedates the Christian era, and the advocates and philosophers of Greece and Rome were evolved together. The former shared in the idealism built up by the latter; and Rome, the great mother of law, early clothed her lawyers with all the dignity, probity, and consequence of favored priests of a favored deity.

The Roman lawyer, eloquent, dignified, unpurchased and unpurchasable proceeding to the forum or the tribune attended by his followers, and graciously accepting from his admiring clients the unsought honorarium, presents a picture of professional ethics which

would seem to admit of but little evolution. Doubtless there were "shysters" in those days, whose honorarium was stipulated at one-third or one-half of recovery, whose clients feared as well as "hired" them, whose presence in the tribune was a menace to public order, or who, with an eye to business, whispered in the ear of dissolute noble or amorous lady the rules of the Roman law of divorce. If there were such, let their names rest in oblivion, and let us remember only the names of those distinguished advocates who stood as the ministers of justice and the oracles of the law.

This high ideal did not long survive the fall of Rome. It soon became the vogue in England to charge fees; and this was followed by provisions for their collection by law. The professional conscience had changed. This change is justifiable, when we consider the great differences between the conditions of the Roman law and the duties of Roman lawyers, and the English law and the duties of English lawyers.

But it is the character of this change which brings about one of the great questions in professional ethics to-day. The ancient ideal of the lawyer, as the expounder of the law, the assistant of the judges, the friend of the friendless, the advocate of the oppressed, the scholar, the man of courtesy, dignity and courage, is still realized among us in all its greatness; and yet, the spirit of commercialism, the spirit that has an eye single to the fee, the spirit that hunts a fee, the spirit that submits to be "hired" by the biggest fee, is among us.

The change of the practice of law from a profession to a business is very marked. The lawyer now must no longer be the student of affairs, the scholar, the orator, impatient of and indifferent to the harassing and mercenary details of business, but he must be a good business man, a man who, to a knowledge of the law, adds a knowledge of business, a man who can solve the difficulties of money matters and suggest a way out of financial trouble and the legal means to an end—without sometimes an overscrupulous regard for the end.

This change in the character of services to be rendered by the lawyer results, perhaps, to a large extent, from the change in busi-

ness methods. The business of the country is being largely done by great corporations, whose legal work is done by a few lawyers, and consists mostly of office advice and not of court-house work. Contracts are made and credit is extended by these corporations under such conditions that they have no need of lawyers or courts to enforce them. The corporation says to the merchant, "pay for this bill of goods, or you get no more; comply with this contract, or your business ends." What need of a lawyer here?

But in this there is nothing necessarily contrary to legal ethics. There is nothing wrong in substituting an office practice for a court-house practice. A lawyer may never address a judge or jury, may confine his labors to adjusting debts, conveyancing, drawing contracts, negotiating business transactions, advising as to business policy, construing statutes, bringing about or preventing legislation, within certain well-defined limits, and perform all the duties of a counsellor and man of business, and still be in every sense a lawyer and a gentleman.

The danger is not here. The danger arises when the lawyer himself, whatever be the sphere of his practice, allows himself to regard his profession as solely, purely, and simply a means of making a living, or making money, or getting an office. Office-getting may well be left out of view, though it rarely is, but the making of a living, and even some money, cannot be wholly left out of view by any lawyer who expects to meet his responsibilities as a man and a citizen. But he fails—he is untrue to his mission—when he makes these things his sole end; when, for a sufficiently large compensation, he sells his time, talents, influence, and conscience to the wealthy, on the one hand, and serves their purposes, whether lawful or unlawful, and does their work, whether clean or dirty; or when he turns to the interests that are not wealthy, on the other hand, and stirs up litigation between neighbors, hunts up defective titles, has his agents at every railroad wreck, and buys or persuades a contract for one-half of recovery from the widow of the dead before the corpse is buried; or when, backed by all the power and prestige of wealthy clients, he buys public opinion, seduces the juries, flatters or overawes the judges, conjures the officers of court, inflates the humble legislator,

or with plausible hypocrisy, bows to the decrees of blind justice which he has framed in advance; or when, appealing to the passions of the discontented and the prejudices of the ignorant, the poverty of the shiftless and the appetites of the vicious, he seeks to array the poor against the rich, the servant against the master, the child against the parent, not for the sake of justice, nor for the sake of right, but for the sake of his own greed, for the sake of the money there is in it. The one may have a more certain income, more respectability, and even a better professional standing—he may get in where the other is left out—but both, in the mouth of the Law, are equally damned.

To the desire for money may, therefore, be traced the larger part of those violations of professional ethics which are most commonly observed and most generally condemned by the public, and most need the restraint of the professional conscience. There are breaches of propriety less conspicuous and coming more peculiarly within the observation of the lawyers themselves, such as are characteristic of human nature generally, which have on other occasions been pointed out and discussed with sufficient fullness and emphasis. A man, who by nature is dishonest or uncandid, or who drinks, gambles and dissipates, bulldozes, browbeats and oppresses, is not in becoming a lawyer, *ipso facto* reformed.

The anxiety to make money—the commercial spirit—has invaded the bar as well as the church and the pulpit, and constitutes the greatest danger to ethics. As stated, the desire to make a living and make money, or hold an office, is not in itself wrong. Large fees are generally the consequences of industry, ability, efficiency and character. But these qualities come first. The world does not owe a lawyer a living or an office any more than it does any other man. If a lawyer cannot make a living or get an office by the legitimate and honorable pursuit of his profession, then let him try something else. If he is a man, he will find that the world needs him. Let him not persist in a calling which he cannot honestly pursue, and destroy his own character and influence for good, and blacken the fair name of his profession, by attempting to trade, coerce, or steal his way to fortune. The day that the things

of religion and the things of the law become the subject-matter of traffic, or bargain and sale, that day is their ethical power destroyed, and with it the influence of all who minister at their shrines.

This spirit has no doubt been intensified by the general decline in the amount of legal business, without any corresponding diminution in the number of lawyers. That some changes in methods of practice are proper will be admitted, but that there should be any compromises with professional morality, no one will admit. How far a lawyer may go in obtaining or attracting business, or in holding it, is a question in which particular circumstances, and personal tact and taste, play important parts; but there are certain limits recognized and fixed, beyond which a lawyer should not go. It is unnecessary to reiterate them here.

As stated above, ignorance of these limits is not the difficulty. The preservation of these limits, the maintenance of the boundary lines of professional ethics, whether or not the territory within its jurisdiction is to be preserved, or whether encroachments or violations by those who in practice do not recognize these lines is to be permitted, is the practical question before us.

In determining this question, this Association has an important duty and responsibility within itself. Rules, which it may lay down have weight and respect only so far as it requires their observance within itself. Let membership in this Association and honors at its hands be evidence of professional probity and integrity, and then its attitude and utterances on the subject of ethics will receive the sanction of consistency. Let it persist in keeping the personal equation subordinate in its actions and deliberations. Let it refuse to aid the professional or political ambition of any lawyer, save merely as an incident to a recognition of his professional character and ability. Let it studiously refuse to be made the instrument of any person, party or class, but let it continue to stand as the tribune where all may be heard on questions properly before it, and as the highest and most disinterested exponent of the views and judgments of the great profession it represents. The law of our ethics requires that any lawyer, however great his talent, or whatever his constituency, who devotes those talents to unworthy

uses, or persistently indulges in methods or practices unsanctioned by that law, shall receive the condemnation and not the approval of this body.

Again, our judges have an important duty regarding this question. There is a presumption that a judge is sound on all questions of professional and legal ethics. The judicial character and office creates that presumption. A judge, who is not sound on this subject, however sound he may be on questions of substantive law, is out of place on the bench. A judge, by virtue of his office, apart from any personal force, can do much to break up unprofessional practices in his court. If a lawyer knows that the judge before whom his case is to be tried has clear views and positive practices on the subject of professional ethics, he will soon find his own views and practices on the subject clearing up. Nor, taking a selfish view of the matter, does a judge ever lose anything by exposing or rebuking unprofessional conduct. The bar applauds it, and there is no doubt as to how the public regards it. The practice of law in our Georgia courts is very informal—indeed, too much so—but the judge who, in an impersonal, impartial and judicial way, makes the lawyers, as well as others, “toe the mark,” and also “toes” it himself, not only gains the approval of the bar, but injects into the strong influence that in every county flows out from the courts an element of dignity, virtue and power which braces up the moral tone of the entire community. In some countries the army, or its local detachment, is looked to as the representative of power. In this country the court is so regarded; and by reason of this preeminent position of power occupied by our courts, our judges are peculiarly chargeable with the guardianship of professional ethics.

The duty of the lawyers themselves in this connection is not overlooked, but experience has demonstrated the reluctance with which local associations or individual lawyers act in matters of this kind, and generally the futility of any such action. It is human nature for every man to attempt to justify his conduct. Very few have the manhood and the courage to face the bar of conscience and hear with patience and submission its judgments. We justify

our conduct by the conduct of others. We give thanks that we are not "as this publican" in some particulars, and forget that we are worse than he is in other particulars. Hence, conscientious men hesitate to accuse their neighbors, though they are the very men who ought to make the accusation.

It follows that public and professional opinion is the most powerful preventive of the evil; and the court can do more than any other agency to put and keep this force in motion. When the court acts officially, or merely assumes a positive and general attitude on the subject, the bar and the public are only too ready to respond and support.

Nor does this suggestion put any extra duty or labor on the judges, but it simply implies that they are what the law says they are.

It is said that lawyers belong naturally to the ruling class in the community, and also that the ruling class is what the people permit it to be. If this be true, then the professional morality of the lawyer is at least partly determined by public opinion or conscience. But this does not absolve the profession from the duty of having and keeping pure its own conscience and ethics, and from having and expressing its opinion. If the public, or any part of it, after being warned, persists in supporting and maintaining an unworthy lawyer, whose sharpness or lack of scruple serves a bad purpose or a desperate case, then let the responsibility fall where it belongs, but let the courts and the bar keep their garments clean.

The lawyer has stood for centuries as the great exponent of conservatism in the development of the English race. He has stood against the aggressions of tyranny on the one hand, and the extravagances of the mob on the other hand. He has clung to the tried and proven methods and rules of the old, and been slow to seize upon the untried and uncertain expedients of the new. He has learned to wait. He has found that old principles, renamed and dressed in new garb, are still the same. In the repose of his professional conscience he has found refuge and strength. His still, small voice has recalled him from the miserable tumults of human greed and passion, and stayed his footsteps when they

would have strayed from the great race-course to pursue the golden fruit. It has held up before him "the prize of the high calling," and has preserved him from "the body of this death." Let him hear its cry to-day. Let him yield nothing to the besetting spirit of commerce. Let him honor those traditions which time has perfected and all history has approved. Let him cling to his faith, and stand fast in the liberty wherewith he is made free.

CLEM P. STEED,

For the Committee on Legal Ethics.

APPENDIX Q.

REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

To the Georgia Bar Association:

Your Committee on Jurisprudence and Law Reform begs leave to submit the following report:

First: As to the matter of changing the law as interpreted by the Supreme Court allowing a witness to a nuncupative will to be a legatee under it; Code §3275, which provides that if a "subscribing witness" is a legatee, the witness is competent but the legacy void, might be changed by substituting for "a subscribing" the words "an attesting," and after "will," in the second line, insert "whether it be written or nuncupative." It seems to your committee that such change would make the matter so plain that there could be no possible misunderstanding of it. As thus changed the section would read: "If an attesting witness is also a legatee or a devisee under the will, whether it be written or nuncupative, the witness is competent, but the legacy or devise is void," etc.

Or,

This section of the Code might be amended by striking out the word "subscribing," in the first line, and not otherwise changing it, in which event the effect would be the same, though the meaning, perhaps, not so clear as with the change first suggested. In which event the section would read: "If a witness is also a legatee or a devisee under the will, the witness is competent, but the legacy or devise is void," etc.

Either change would, in the minds of your committee, meet the objections as set out in the decision in the case of *Smith v. Crotty*, in the 112th Georgia, page 906, which seems to have been the cause of the reference of this question to us.

Second: As to the matter of amending the law regulating private corporations, as suggested by the paper of Mr. Shepard Bryan:

(a) It seems that turning out "wildcat" companies to prey upon other States when they are not allowed to do business in Georgia could be prevented by amending Code §2032, by adding thereto a provision, as suggested by Mr. Bryan, that the charter should be revoked unless a license is applied for and granted within some reasonable time, say sixty days after the granting of the charter.

(b) As to the difficulties to insurers arising from the many different forms of fire insurance contracts, your committee would suggest it advisable that a standard form should be required by the Legislature, and that that form be the one adopted by the State of New York, which is now used by nearly all of the large fire insurance companies, and is an excellent form of contract for both insurer and insured, and has been adopted by some other States, possibly all, who have prescribed any form. Copies of this can be obtained from any insurance agent so easily that we deem it not proper to undertake to incorporate it in this report, as it would be very long.

(c) In regard to publicity for the benefit of persons dealing with corporations: It seems to your committee that this would be but a fair return to the public for the exemption which stockholders enjoy from a personal liability beyond their unpaid subscriptions to corporate stock, and that it would be well to require that all corporations should file annually with the clerk of the superior court, or the Secretary of State, according to where the charter is recorded (that the same might be easily accessible along with the charter), statements of their assets and liabilities, going into such detail as would enable persons dealing with them to form an intelligent opinion as to their real financial standing.

(d) As to the suggestion of having the word "corporation or company" attached to the name of every corporation: We think it well to have this requirement, or something to indicate, so that the public may be on notice that it is dealing with a corporation and not an individual or firm.

(e) As to the suggestion about expediting the granting of char-

ters: We think it well to let the present term of thirty days stand, as that is the length of time now provided for publication of almost all legal notices, and provide that interested parties might file a caveat and be heard, as there might be good objections on the part of some one to the granting of almost any charter, such as having a similar or the same name as a corporation already in existence, or otherwise infringing vested rights.

(f) As to requiring all charters recorded in the office of the Secretary of State and reports to be filed there: We think that this should be required only for charters granted by the Secretary of State, and that those granted by the superior courts should be required to be recorded in the county granting them, as the principal office and place of business of the corporation is generally in such county, and there would be a record of any mortgages or other items of interest concerning the corporation.

(g) As to the suggestion of having a "corporation examiner": It seems to us that if the publicity stated above, and the access of the books to creditors were given, there would be no need to burden either the State or the corporations with the expense of an examiner, or perhaps better, several examiners, as we think it would require several to make the examination of the numerous corporations in the State with sufficient frequency to be of any real value. But we would suggest that before granting the charter, the judge or some other officer, the clerk, perhaps, should pass on the value of what is to be paid in for stock other than cash.

There is another matter about which we volunteer a report: Code §4165 provides that justices of the peace shall issue execution "after the expiration of four days, Sundays excepted." §4205 provides that the county judges shall issue executions immediately where no appeal or *certiorari* is taken. §5413, on the subject of executions generally, provides that the clerk shall issue execution when judgment has been rendered, no delay being suggested.

While the courts have held, in 83 Ga. 563, that an execution from justice court issued before expiration of four days is "irregular, but not void," it has been held in the 106th Ga. 757, that it may be attacked by illegality by the defendant. Our reading of the law is

that this sort of error cannot be corrected by amendment, and where property has been sold in the meantime, the lien of the plaintiff is lost, only because the justice of the peace issued the execution within the four days. In addition to the fact that §4165, about executions from justice courts, provides that the execution shall be issued when no appeal lies or none is entered, and §5415, on the general subject of execution, provides that entering an appeal shall suspend the execution, it seems to us eminently proper that §4165 should be amended by striking out the words "after the expiration of four days, Sundays excepted"; and we recommend that a bill to this effect be presented to the Legislature.

As the Association now has a standing Committee on Legislation, we presume that it will be their province to draft the bills to be presented to the Legislature, and we have therefore put our report in this shape instead of preparing bills to be presented to that body, and hope that that committee will be instructed to draw bills covering these suggestions.

All of which is respectfully submitted.

J. H. MERRILL, Chairman.
H. C. PEEPLES,
C. A. TURNER,
H. E. W. PALMER.

Constitution and By-Laws of the Georgia Bar Association.

CONSTITUTION.

ARTICLE I.

The object of this Association shall be to advance the science of jurisprudence, promote the administration of justice throughout the State, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the bar of Georgia. This Association shall be known as The Georgia Bar Association.

ARTICLE II.

Any person shall be eligible to membership in this Association who shall be a member of the bar of this State in good standing, and who shall also be nominated as hereinafter provided. The judges of the Supreme, Superior and City Courts of this State, and the judges of the Federal Courts in this State, shall, so long as they remain in office, be honorary members of this Association, with all the rights and privileges of regular members, and without liability for the payment of dues.

ARTICLE III.

The officers of this Association shall consist of one President, five Vice-Presidents, a Secretary, a Treasurer, an Executive Committee, to be composed of the President, Secretary and Treasurer, together with four members to be chosen by the Association, one of whom shall be Chairman of the committee. Each of these officers shall be elected at each annual meeting for the year ensuing, but the same person shall not be elected President two years in succession. All such elections shall be by ballot. The officers elected shall hold office until their successors are elected and qualified according to the Constitution and By-laws.

ARTICLE IV.

At the meetings of the Association all elections to membership shall be by the Association, upon recommendation of the Executive Committee. All elections for membership shall be by ballot, and several nominees, if from the same county, may be voted for upon the same ballot, and in such case, placing the word "no" against any name or names upon the ticket, shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat any election for membership. Except during the meetings of the Association, the Executive Committee shall have full power to admit applicants to become members of this Association.

ARTICLE V.

Each member shall pay five dollars to the Treasurer as annual dues, in advance, and no person shall be qualified to exercise any privileges of membership who is in default. Such dues shall be payable and payment thereof enforced, as may be provided by the By-laws. Members shall be entitled to receive all publications of the Association free of charge.

ARTICLE VI.

By-laws may be adopted at any annual meeting of the Association by a majority of the members present.

ARTICLE VII.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each:

1. On Jurisprudence and Law Reform.
2. On Judicial Administration and Remedial Procedure.
3. On Legal Education and Admission to the Bar.
4. On Grievances.
5. On Memorials.
6. On Federal Legislation.
7. On Interstate Law.
8. On Legal Ethics.
9. On Reception.

A majority of the members of any committee, who may be present at any meeting of such committee, shall constitute a quorum for the purpose of such meeting. Vacancies in any office provided for by this Constitution, shall be filled by appointment by the President, and the appointee shall hold office until the next meeting of the Association.

ARTICLE VIII.

The Executive Committee shall perform such duties as may be assigned to it by the President, or may be defined by the By-laws, except as herein otherwise directed.

ARTICLE IX.

This Association shall meet annually, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum. The Executive Committee shall require thirty days' notice of the time and place of meeting by publication in a public newspaper to be given, which publication shall be made by the Secretary.

ARTICLE X.

The Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.

ARTICLE XI.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association, or in his profession, on conviction thereof, in such manner as may be provided by the By-laws.

ARTICLE XII.

This Constitution shall go into immediate effect. This Association shall be incorporated under the laws of the State of Georgia as soon as practicable, and until such incorporation all money and property of said Association shall be vested in the President and Treasurer, as trustees thereof, who shall pay over and deliver the same to said corporation as its property, as soon as the corporation is created by law.*

* The charter was duly obtained. See First Report. page 16.

BY-LAWS.

I.

The President shall preside at all meetings of the Association, and in case of his absence one of the Vice-Presidents shall preside. He shall open each meeting with an annual address.

II.

The Secretary shall keep a record of all meetings of the Association, and of all other matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association with the concurrence of the President. He shall notify the officers and members of their elections, and shall keep a roll of the members, and shall issue notices of all meetings. His salary shall be \$200 per annum.

III.

The Treasurer shall collect and, under the discretion of the Executive Committee, disburse all funds of the Association; he shall report annually, and oftener if required; he shall keep regular accounts, which shall at all times be open to inspection of the members of the Association. His accounts shall be audited by the Executive Committee. Before discharging any of the duties of this office he shall execute a bond, with good and sufficient security, to be approved by the President, payable to the President and his successors in office, in the sum of five thousand dollars, for the use of the Association, and conditioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof. His salary shall be \$100 per annum.

IV.

The Executive Committee shall meet upon the call of the Chairman. They shall have power to arrange the program for the annual meetings, and to make such regulations, not inconsistent with the Constitution and By-laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of their proceedings, which shall be read at the ensuing meeting of the Association; and it

shall be their duty to present business for the Association. They shall examine and report upon all matters proposed to be published by the authority of the Association, and attend to the publication and distribution of the same. They shall have the power to make the Association liable for any debt amounting to not more than half of the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.

V.

At each annual, stated or adjourned meeting of the Association, the Order of Business shall be as follows:

1. Reading minutes of preceding meeting.
2. Address of the President.
3. Report of Treasurer.
4. Report of Executive Committee.
5. Elections, if any, to membership.
6. Report of other committees.
7. Report of special committees.
8. Election of officers and appointment of committees.
9. Miscellaneous business.

This Order of Business may be changed by a vote of a majority of the members present.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

VI.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by letter to the Secretary to that effect, and by payment of his annual dues, he shall be deemed to have declined to become a member.

VII.

In pursuance of Article VII. of the Constitution, there shall be the following standing committees:

1. A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law, and of recommending such as, in their opinion, may be entitled to the favorable consideration of the Association.
2. A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working

of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending from time to time to the Association such action as they may deem expedient. Both of the foregoing committees shall invite suggestions on the topics confided to their charge from all the members of the Association, and, if they see fit, from all the lawyers of the State; and where their report recommends changes in legislation, the Association may appoint either the same or other committees to bring such matters properly to the attention of the General Assembly.

3. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what changes it is expedient to propose in the system and mode of legal education and of admission to the practice of the profession in the State of Georgia.

It shall be the duty of the foregoing standing committees to consider the suggestions made in each address and paper presented at each annual meeting of the Association, which fall within the scope of the topics confided to said committees, and to report thereon at the next annual meeting.

4. A Committee on Grievances, who shall be charged with the hearing of all complaints which may be made in matters affecting the interest of the legal profession, or the professional conduct of any member of this bar, and the administration of justice, and to report the same to the Association with such recommendation as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against such offenders, and to such extent as the Association may order, the cost of such proceedings to be paid by the Executive Committee out of moneys subject to be appropriated by them.

5. A Committee on Memorials, who shall prepare and furnish to the Secretary, brief, appropriate notices of members who have died during the year preceding each annual meeting; such notices not to exceed one page of printed matter, and to be published in the annual report. They shall also prepare or secure annually at least one biographical sketch of some member of the bench or bar of Georgia, now deceased, having special reference to his professional career, and have the same presented at the annual meeting; and, whenever practicable, they shall secure a steel engraving or other suitable picture of the subject of the sketch to be inserted in the published proceedings.

6. A Committee on Federal Legislation, who shall be charged with the duty of examining and reporting upon such Federal legislation proposed or enacted, as may be of interest to the legal profession, and

especially such as affects the Federal judicial system, and procedure and practice in the Federal courts.

7. A Committee on Interstate Law, who shall be charged with the duty of bringing to the attention of the Association such action as shall be proposed by the American Bar Association, looking to the promotion of greater uniformity in the laws of the several States on subjects of common interest; and of suggesting propositions looking to the same end, and, where such action is favored by the Association, to bring the same to the attention of the General Assembly, and to endeavor to secure the adoption of the legislation so recommended.

8. A Committee on Legal Ethics, who shall be charged with the duty of reducing to the form of rules or canons the principles of ethics regulating the relations of lawyers to the courts, the public, their clients and each other; with the further duty of taking such action as they may deem best, in case any departures from these principles by members of the bar of the State come to their notice or are brought to their attention.

9. A Committee on Reception, who shall be charged with the duty, at all meetings of the Association, of promoting social intercourse and fraternity among the members, to the end that every member attending shall become personally acquainted with every other member.

VIII.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of the Association, and a list thereof, and of all special committees, transmitted to the Secretary within thirty days from each annual meeting, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with the power to adopt rules for their own government, not inconsistent with the Constitution or these By-laws. The Secretary shall, within thirty days after receipt thereof from the President, notify each committeeman, giving full list of his committee. Any standing committee of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation by the member so absent of his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance, and may provide for the disposition of the fines collected under such a rule.*

* As to payment of expenses of committees, see Report for 1885-86, page 70. As to printing committee reports in advance of annual meetings, see Report for 1886-87, page 6.

IX.

Whenever any complainant shall be preferred against a member of the Association for misconduct in his relation to this Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Grievances, in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The Committee shall thereupon examine the complaint, and if they are of the opinion that the matters therein alleged are of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days, of the time and place when the committee will meet for the consideration thereof, to be served on the member complained of, either personally or by leaving the same at his place of business during office hours, properly addressed to him.

If, after hearing his explanation, the committee shall deem it proper that there shall be a trial of the charge, they shall cause a similar notice of five days, of the time and place of trial to be served on the party complained of. The mode of procedure upon the trial of such complaint shall conform as near as may be to the provisions of §§420 to 434 of the Code, inclusive.*

X.

Nominations of candidates to fill the respective offices may be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or to membership, must be by ballot. A majority of the votes cast shall be sufficient to elect to office; but five negative votes shall be sufficient to defeat an election to membership.

XI.

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the person thus appointed shall hold for the unexpired term of his predecessor; but if a vacancy occur in the office of President it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy, and the person elected shall hold office for the unexpired term of his predecessor.

* The citation is to the Code of 1882. In Civil Code of 1895, the sections are 4431 to 4445 inclusive.

XII.

All annual dues of this Association shall be paid in advance by each member upon his election, and on or before May 1st for each year during membership, and any member failing to pay his annual dues in such manner shall be in default, and upon the order of the President, the Secretary shall strike the name of such member from the roll of membership, and such member shall not be reinstated unless, for good cause shown, the President shall excuse such default, in which last event the name of such member shall, upon the order of the President, be restored by the Secretary to the roll of membership. The Treasurer shall, on the 15th day of April of each year, inform each member of the Association that on the first day of May next, the Treasurer will draw at sight on said member for the amount due to the Association, and on the first day of May the Treasurer shall so draw for such dues upon each and every member of the Association who may at that time be indebted to the Association.

XIII.

These By-laws may be amended at any stated, adjourned or annual meeting of the Association by a majority vote of those present.

XIV.

Any officer may resign at any time, upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association, and from the date of the receipt by the Secretary of a notice of resignation, with an endorsement thereon by the Treasurer that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

XV.

The Association shall hold its annual meeting each year at such time and place as may be fixed by the Executive Committee, and by the direction of the Executive Committee the Secretary shall give notice of the time and place of such annual meeting by publication in a public newspaper for thirty days. If the President and Executive Committee shall determine that it is necessary for said Association to hold any other meeting during the year, the same shall be held at such time and place as the President and Executive Committee may fix, and upon twenty days' notice of such time and place, to be given by the Secretary, by publication in a public newspaper, and the Secretary shall give this notice upon the order of the President.

XVI.

No resolution complimentary to any officer or member shall be entertained.

XVII.

All addresses, essays and other papers, read at the meetings of the Association, shall be transmitted to the Secretary within thirty days from the adjournment of the annual meeting, and if not so furnished, the Executive Committee shall proceed to publish the proceedings without such papers.

XVIII.

There shall be a standing committee, consisting of three members, to be appointed by the President during the session of the Association. This committee shall be known as the Committee on Legislation, and its duty shall be to prepare for legislative action such matters requiring legislation as may have received the approval of the Association. It shall further be the duty of such committee to make due presentation of such proposed legislation to the appropriate legislative committees or bodies.

OFFICERS AND COMMITTEES OF THE GEORGIA BAR ASSOCIATION.

FOR 1902-1903.

President.

BURTON SMITH, Atlanta.

Vice-Presidents.

First—P. W. MELDRIM	Savannah
Second—A. P. PERSONS	Talbotton
Third—W. W. BACON, JR	Albany
Fourth—W. M. TOOMER	Waycross
Fifth—W. K. MILLER	Augusta

Secretary.

ORVILLE A. PARK, Macon.

Treasurer.

Z. D. HARRISON, Atlanta

EXECUTIVE COMMITTEE.

ALEXANDER R. LAWTON, Chairman	Savannah
MARCUS W. BECK, Chairman *.	Griffin
T. A. HAMMOND	Atlanta
RUBEN R. ARNOLD †	Atlanta
LLOYD CLEVELAND	Griffin
J. B. BURNSIDE	Hamilton

STANDING COMMITTEES.

On Jurisprudence and Law Reform.

John W. Akin, Chairman	Cartersville
W. W. Osborne	Savannah
H. C. Peeples	Atlanta
A. P. Persons	Talbotton
Horace M. Holden	Crawfordville

*Appointed by the President to fill vacancy caused by resignation of Alexander R. Lawton.

†Appointed by the President to fill vacancy caused by resignation of T. A. Hammond.

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On Judicial Administration and Remedial Procedure.

W. H. Griffin, Chairman	Valdosta
Spencer R. Atkinson	Atlanta
P. H. Brewster	Atlanta
M. J. Yeomans	Dawson
Alexander Ackerman	Macon

On Legal Education and Admission to the Bar.

H. Warner Hill, Chairman	Greenville
J. L. Sweat	Waycross
T. J. Chappell	Columbus
Pope Barrow	Savannah
Howard Van Epps	Atlanta

On Grievances.

Roland Ellis, Chairman	Macon
J. Render Terrell	Greenville
B. S. Miller	Columbus
E. T. Moon	Macon
John W. Bennett	Waycross

On Memorials.

W. D. Nottingham, Chairman	Macon
Joel Branham	Rome
Z. D. Harrison	Atlanta
Sylvanus Morris	Athens
Henry R. Goetchius	Columbus

On Federal Legislation.

Hamilton McWhorter, Chairman	Athens
James Bishop, Jr.	Eastman
F. E. Callaway	Atlanta
W. M. Hammond	Thomasville
B. F. Abbott	Atlanta

On Interstate Law.

W. M. Toomer, Chairman	Waycross
F. A. Hooper	Americus
W. W. McDonald	Douglas
Morris Brandon	Atlanta
W. K. Miller	Augusta

On Legal Ethics.

W. D. Ellis, Chairman	Atlanta
J. R. Lamar	Augusta
Clem P. Steed	Macon
Clifford L. Anderson	Atlanta
James L. Willis	Columbus

On Reception.

T. B. Felder, Chairman	Atlanta
R. C. Alston	Atlanta
E. R. Black	Atlanta
W. A. Charters	Dahlonega
J. D. Boyd	Griffin

On Legislation.

John D. Little, Chairman	Columbus
Henry C. Peeples	Atlanta
W. M. Toomer	Waycross

SPECIAL COMMITTEES.

On Relief of the Supreme Court.

Burton Smith, Chairman, <i>ex officio</i>	Atlanta
Washington Dessau, State at Large	Macon
Jos. Hansell Merrill, State at Large	Thomasville
S. B. Adams, 1st Congressional District	Savannah
Arthur Gray Powell, 2d Congressional District	Blakely
E. A. Hawkins, 3d Congressional District	Americus
T. J. Chappell, 4th Congressional District	Columbus
Hoke Smith, 5th Congressional District	Atlanta
M. W. Beck, 6th Congressional District	Griffin
John W. Akin, 7th Congressional District	Cartersville

A. L. Bartlett,* 7th Congressional District	Brownsville
J. B. Park, Jr., 8th Congressional District	Greensboro
W. A. Charters, 9th Congressional District	Dahlonega
W. K. Miller, 10th Congressional District	Augusta
Jno. W. Bennett, 11th Congressional District	Waycross
Orville A. Park, Secretary, <i>ex officio</i>	Macon

On the Registration of Land Titles.

Washington Dessau, Chairman	Macon
T. A. Hammond	Atlanta
H. Warner Hill	Greenville
Henry R. Goetchius	Columbus
Sylvanus Morris	Athens

Delegates to American Bar Association.

George W. Owens	Savannah
W. A. Wimbish	Atlanta
E. T. Brown	Atlanta

ALTERNATES.

F. A. Hooper	Americus
Ruben R. Arnold	Atlanta
Marion W. Harris	Macon

Delegates to American Congress of Tuberculosis.

W. E. H. Searcy, Jr., Chairman	Griffin
B. S. Miller	Columbus
John W. Bennett	Waycross
W. W. Bacon, Jr	Albany
W. A. Charters	Dahlonega

*Appointed in place of John W. Akin resigned, .

OFFICERS
OF
THE GEORGIA BAR ASSOCIATION
FOR PAST TERMS.

1883-84.

President.

L. N. WHITTLE.

Vice-Presidents.

- | | |
|-------------------------|--------------------|
| 1—CHARLES C. JONES, JR. | 3—M. H. BLANDFORD. |
| 2—HENRY JACKSON. | 4—POPE BARROW. |
| 5—GEORGE A. MERCER. | |

Secretary and Treasurer—W. B. HILL.

1884-85.

President.

WILLIAM M. REESE.

Vice-Presidents.

- | | |
|------------------|-------------------|
| 1—F. H. MILLER. | 3—W. S. BASINGER. |
| 2—L. F. GARRARD. | 4—W. M. HAMMOND. |
| 5—H. P. BELL. | |

Secretary.
W. B. HILL.

Treasurer.
S. BARNETT, JR.

1885-86.

President.

JOS. B. CUMMING.

Vice-Presidents.

1—P. L. MYNATT.

3—J. M. PACE.

2—W. A. LITTLE.

4—W. H. DABNEY.

5—F. G. DUBIGNON.

Secretary.

W. B. HILL.

Treasurer.

S. BARNETT, JR.

1886-87.

President.

CLIFFORD ANDERSON.

Vice Presidents.

1—N. J. HAMMOND.

3—A. S. ERWIN.

2—W. A. LITTLE.

4—A. H. HANSELL.

5—J. C. C. BLACK.

Secretary.

W. B. HILL.

Treasurer.

S. BARNETT, JR.

1887-88.

President.

WALTER B. HILL.

Vice-Presidents.

1—GEO A. MERCER.

3—I. E. SHUMATE.

2—POPE BARROW.

4—B. P. HOLLIS.

5—E. N. BROYLES.

Secretary.

J. H. LUMPKIN.

Treasurer.

S. BARNETT, JR.

1888-89.

President.

MARSHALL J. CLARKE.

Vice-Presidents.

1—J. C. C. BLACK.

3—C. C. KIBBEE.

2—A. S. CLAY.

4—A. T. MCINTYRE, JR.

*Secretary.**Treasurer.*

JOHN W. AKIN.

S. BARNETT, JR.

1889-90.

President.

GEORGE A. MERCER.

Vice-Presidents.

1—W. DESSAU.

3—JOHN L. HOPKINS.

2—POPE BARROW.

4—S. R. ATKINSON.

*Secretary.**Treasurer.*

JOHN W. AKIN.

S. BARNETT, JR.

1890-91.

President.

FRANK H. MILLER.

Vice-Presidents.

1—M. J. CLARKE.

3—P. W. MELDRIM.

2—C. N. FEATHERSTON.

4—M. P. REESE.

5—GEORGE D. THOMAS.

*Secretary.**Treasurer.*

JOHN W. AKIN.

Z. D. HARRISON.

1891-92.

President.

JOHN PEABODY.

Vice-Presidents.

1—A. O. BACON.

3—M. P. REESE.

2—JOHN I. HALL.

4—JOHN W. PARK.

5—W. H. FLEMING.

Secretary.

JOHN W. AKIN.

Treasurer.

Z. D. HARRISON.

1892-93.

President.

W. DESSAU.

Vice-Presidents.

1—JOHN W. PARK.

3—M. P. REESE.

2—W. M. HAMMOND.

4—W. H. FLEMING.

Secretary.

JOHN W. AKIN.

Treasurer.

Z. D. HARRISON.

1893-94.

President.

LOGAN E. BLECKLEY.

Vice-Presidents.

1—W. H. FLEMING.

3—H. R. GOETCHIUS.

2—C. N. FEATHERSTON.

4—A. H. MACDONELL.

5—C. C. SMITH.

Secretary.

JOHN W. AKIN.

Treasurer.

Z. D. HARRISON.

1894-95.

President.

WILLIAM H. FLEMING.

Vice-Presidents.

1—GEORGE HILLYER.

3—W. G. CHARLTON.

2—L. C. LEVY.

4—JNO. H. MARTIN.

5—C. A. TURNER.

Secretary.

JOHN W. AKIN.

Treasurer.

Z. D. HARRISON.

1895-96.

President.

JOHN W. PARK.

Vice-Presidents.

1—POPE BARROW.

3—F. D. PEABODY.

2—BURTON SMITH.

4—C. C. SMITH.

5—H. McWHORTER.

Secretary.

JOHN W. AKIN.

Treasurer.

Z. D. HARRISON.

1896-97.

President.

HENRY R. GOETCHIUS.

Vice Presidents.

1—H. McWHORTER.

3—J. RENDER TERRELL.

2—W. C. GLENN.

4—A. H. MACDONELL.

5—H. H. PERRY.

Secretary.

JOHN W. AKIN.

Treasurer.

Z. D. HARRISON.

1897-98.

President.

JOHN W. AKIN.

Vice-Presidents.

1—H. McWHORTER.

3—J. CARROLL PAYNE.

2—L. C. LEVY.

4—JOHN F. DELACY.

5—P. W. MELDRIM.

Secretary.

J. H. BLOUNT, JR.

Treasurer.

Z. D. HARRISON.

1898-99.

President.

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3—MORRIS BRANDON.

2—J. HANSELL MERRILL.

4—W. M. HENRY.

5—T. J. CHAPPELL.

Secretary.

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1899-1900.

President.

JOSEPH R. LAMAR.

Vice-Presidents.

1—H. W. HILL.

3—JOHN J. STRICKLAND.

2—CHARLTON E. BATTLE.

4—B. H. HILL.

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4—A. F. DALEY.

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President.

CHARLTON E. BATTLE.

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3—A. P. PERSONS.

2—PETER W. MELDRIM.

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